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AMENDMENTS TO THE FAIR LABOR STANDARDS ACT, CERTIFICATION AND AGES OF HANDICAPPED WORKERS

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HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR STANDARDS

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2676

TO AMEND THE FAIR LABOR STANDARDS ACT OF 1938 TO REQUIRE THAT WAGES BASED ON INDIVIDUAL PRODUCTIVITY BE PAID TO HANDICAPPED WORKERS EMPLOYED UNDER CERTIFICATES ISSUED BY THE SECRETARY OF LABOR.

HEARING HELD IN WASHINGTON, DC, OCTOBER 3, 1985

Serial No. 99-76

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AMENDMENTS TO THE FAIR LABOR STANDARDS ACT, CERTIFICATION AND AGES OF HANDICAPPED WORKERS

THURSDAY, OCTOBER 3, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LABOR STANDARDS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 10:30 a.m., in room 2261, Rayburn House Office Building, Hon. Austin J. Murphy (chairman of the subcommittee) presiding.

Members present: Representatives Murphy, Petri, and Bartlett.

Staff present: Thomas Lamb, subcommittee staff director; Richard Fiesta, subcommittee counsel; and Mark Powden, minority labor staff director and administrator.

[Text of H.R. 2676 follows:]

H.R. 2676, 99th Cong., 1st Sess.

A BILL To amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended to read as follows:

"(c) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury. Under such certificates individuals shall be paid wages which—

(1) are lower than the minimum wage applicable under section 6.

(2) are commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(3) are related to the individual's productivity.".

Mr. MURPHY. This morning the Subcommittee on Labor Standards has convened to receive testimony on H.R. 2676, a bill introduced by my distinguished colleague, Mr. Petri, the ranking minority member of the subcommittee.

I am pleased to once again hear from several organizations that I had the pleasure and good fortune of working with during my term as chairman of the Subcommittee on Select Education.

It is the belief of the supporters of this legislation that the current administration of sheltered workshops is not having the originally intended result. I look forward to the testimony of today's witnesses in hopes that we can continue to improve the prospects

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of allowing this Nation's handicapped individuals to receive their fullest potential.

As everyone here is aware, the House is in session considering amendments to the farm bill. Because of the importance of that issue to all the Members, and the need of us to participate in the voting, we hope that the witnesses here this morning will summarize their remarks and keep them as brief as possible, and we will certainly submit all statements into the record and have them printed in toto.

At this time I would like to insert in the record the statement of the Honorable C.W Young, without objection. Then introduce and ask my colleague Mr. Petri if he has an opening statement.

[The prepared statement of Hon. Bill Young follows:]

PREPARED STATEMENT OF HON. BILL YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I want to thank you and the members of your subcommittee for allowing me to testify this morning in support of H.R. 2676, legislation I have cosponsored to amend the Fair Labor Standards Act of 1938 to allow wages for handicapped individuals to be based on productivity rather than a minimum wage.

The Abilities Rehabilitation Center of Pinellas County, Florida, which I represent, and other centers like it throughout our nation help handicapped workers become productive members of our society through training and therapy. The Federal Fair Labor Standards Act has supported their efforts to help the disabled join the workforce by allowing physically and mentally handicapped individuals payment for their work below the minimum wage level. Many handicapped persons have acquired the skills to compete in the same markets and for the same wages as nonhandicapped individuals. However, there are disabled Americans who are so severely handicapped that they must be employed in supervised work centers where work is a means of rehabilitation and therapy.

Congress established in 1966 that handicapped individuals in sheltered workshops could receive wages no lower than 50 percent of the minimum wage. Exceptions to the law were allowed for the most severely handicapped, or for those in theraputic and training programs. In these cases, certificates are granted to workshops allowing payment below minimum wage.

Great strides have been made since that time to assimilate larger numbers of handicapped individuals into the workforce. In the past, the majority of disabled persons finding jobs were those with physical handicaps. More recently, advances in training and rehabilitation have enable mentally and developmentally disabled individuals to enter the workshops.

As a result, there have been an increasing number of applications for certificates to provide for wages below 50 percent of the minimum wage rate. This has provided for a paperwork and bureaucratic nightmare that raises the cost of training the handicapped.

The General Accounting Office and Department of Health and Human Services have studied the problem of certification and have recommended, as H.R. 2676 provides, that federal law be amended to provide for one labor certification to allow handicapped workers to be paid wages based on their individual productivity instead of a percentage of the minimum wage.

Our nation's rehabilitation centers and associations support this legislation because it will ease the paperwork burden and help better achieve our overall desired goal of assisting the handicapped in their efforts to find employment. The handicapped face many barriers to entry in the workforce. It's my hope that we can remove one of these obstacles so that more disabled persons can be placed in positions where they can proudly contribute to our nation's communities.

Mr. PETRI. Thank you, Austin. I'm going to follow your advice and make a very brief statement and insert my full statement, if I could have permission, in the record.

Mr. MURPHY. Thank you, sir. Without objection.

Mr. PETRI. I deeply appreciate your holding this hearing on H.R. 2676, which you mentioned I introduced last June. I also want to

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thank in advance all the witnesses who have been good enough to come today to give us the benefit of their views on this legislation.

Whenever you consider any amendments to the Fair Labor Standards Act, you raise fears that you may be opening up all kinds of complicated and highly contentious issues; and this is understandable indeed. However, if the bill which is the subject of this morning's hearings moves forward through the legislative process, I feel confident that we can insulate it from other Fair Labor Standards Act questions. For this issue is not really a labor standards issue at all, but rather a handicapped services issue.

It's not the intent of this bill to lower or change what anyone is paid. Its intent is rather to rationalize and simplify the administration of sheltered workshops. The current system of multiple certificates has been called an administrative nightmare. It creates a tremendous paperwork burden, and there no longer appears to be much purpose to it, given the dramatic changes in the population being served that have taken place over the past 20 years.

By making these improvements, I hope we can free both the Labor Department and the workshops to spend more of their time on improving services to clients, which is what everyone wants to do.

Mr. MURPHY. Thank you, Mr. Petri.

[The prepared statement of Hon. Thomas E. Petri follows:]

PREPARED STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman, I deeply appreciate your holding this hearing on H.R. 2676, which I introduced last June. I also want to thank in advance all the witnesses who have been good enough to come today to give us the benefit of their views on this legislation.

Whenever you consider any amendment to the Fair Labor Standards Act, you raise fears that you may be opening up all kinds of complicated and highly contentious issues. This is very understandable. However, if the bill which is the subject of this morning's hearing moves forward through the legislative process, I feel confident that we can insulate it from other Fair Labor Standards Act questions. For this issue is not really a labor standards issue at all, but rather a handicapped services issue.

It is not the intent of this bill to lower or change what anyone is paid. Its intent is rather to rationalize and simplify the administration of sheltered workshops. The current system of multiple certificates has been called an administrative nightmare. It creates a tremendous paperwork burden, and there no longer appears to be much purpose to it, given the dramatic changes in the population being served that have taken place over the past 20 years. By making these improvements, I hope we can free both the Labor Department and the workshops to spend more of their time on improving services to clients, which is what everyone wants to do.

The Fair Labor Standards Act has always provided special provisions to pay physically and mentally handicapped persons special minimum wages based on their individual productivity. These provisions allow employment opportunities for handicapped persons who would not be able to compete for jobs in the regular labor marketplace if the regular minimum wage had to be paid.

While many handicapped persons are now able to work competitively and earn wages and salaries equal to those of nonhandicapped persons, there are still large numbers of handicapped persons whose disabling conditions are so severe as to substantially reduce their ability to work when compared with nonhandicapped persons. Many of these severely handicapped persons work in sheltered workshops where jobs within the limitations of the handicapping conditions, as well as many supportive services, can be provided, which enable these persons to live and work outside of institutional settings.

The last major change in the special minimum wage provision, section 14(c) of the Fair Labor Standards Act, came in 1966 when a floor of 50 percent of the minimum wage was set for handicapped workers. There was a recognition that there would be

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circumstances when that level could not be met by the productivity of a handicapped person. Thus, there were exceptions for persons engaged in evaluation or training programs, persons certified by the State vocational rehabilitation agency as being too severely handicapped to meet the 50-percent level, and for persons in work activities centers where the work is primarily for therapeutic reasons. The Department of Labor issues special certificates for the basic program and for each of the four exceptions to the 50-percent floor. Currently, there are 4,814 workshops holding 8,222 program certificates. Seventy-five percent of the certificates are for exceptions to the 50-percent floor.

Since 1966, there has been a dramatic turnaround in the nature of persons served in sheltered workshops. Where once there were predominatly physically handicapped persons, now persons with mental or developmental disabilities predominate. These more severely handicapped persons need more extensive assistance and tend to be less able to produce at a level equal to or greater than the 50 percent level and must work under one of the exceptions to that general rule.

A study of sheltered workshops by the General Accounting Office published in 1981 concluded that the 50 percent floor was not having the intended effect. Because of the high intake of much more severely handicapped persons, only 17 percent of the persons served or employed in sheltered workshops benefited from the 50-percent floor—by 1984, this figure was down to 13 percent. GAO recommended elimination of the 50-percent floor. Workshops would be required to pay each handicapped worker based on his or her individual productivity. This would greatly simplify the process for certification and would allow sheltered workshops and the Department of Labor to focus their efforts on substantive compliance reviews rather than paperwork and technical compliance. Another major study prepared for for the Department of Health and Human Services found that the 1966 amendments to the Fair Labor Standards Act were complex and implemented by even more complex regulations and produced an "administrative nightmare." This 1980 study also recommended elimination of the 50-percent floor and use of a single certificate.

Based on a documented need to simplify the fair Labor Standards Act provisions with regard to sheltered workshops and handicapped workers, I am recommending changes in the Fair Labor Standards Act based on Language recommended by the General Accounting Office. The changes in section 14(c) would guarantee that each handicapped worker would be paid according to his or her individual productivity.

This is significant legislation for rehabilitation facilities and the severely disabled persons for whom they provide services and employment. It has been supported by the National Association of Rehabilitation facilities, Goodwill Industries of America, United Cerebral Palsy Associations, Inc., National Easter Seal Society, National Industries for the Severely Handicapped, Association for Retarded Citizens of the United States, and the National Association of Jewish Vocational Services.

Mr. MURPHY. The first panel of witnesses I would ask to come up and sit at the table: Mr. James Ansley; Mr. David Cooney; Mr. Joseph Hartnett; Mr. John Lapidakis; Eivind H. Johansen; and Tony Records.

There is a rollcall vote.

OK, Mr. Ansley.

STATEMENT OF JAMES ANSLEY, ACTING EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Mr. ANSLEY. Good morning, Mr. Chairman. My name is James Ansley, and I'm acting executive director of the National Association of Rehabilitation Facilities. I would like to especially thank you and Congressman Petri this morning for holding these hearings. We are hopeful that it will be the beginning of bringing this important issue to resolution.

Just a brief note about the National Association of Rehabilitation Facilities. We are the professional trade association that represents community-based sheltered workshops and work activity centers across the country. Our member facilities serve in excess of 400,000 severely disabled individuals per year, and the services that

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they provide range from all of the therapeutic services through short term and extended employment.

The National Association of Rehabilitation Facilities has been concerned for several years that the statutory provisions of the Fair Labor Standards Act that govern wages for handicapped workers unfairly segregates the nonseverely handicapped from other workers. It imposes an unnecessary burden on the employers, and generally does not recognize the changes that have occurred in the field of rehabilitation over the past 20 years. We are here today to testify in support of H.R. 2676.

When the Fair Labor Standards Act was passed in 1938, protections were placed in it for several levels of workers. As far as handicapped workers were concerned, we were afraid that they would not be employed if they had to be paid the full minimum wage. To prevent this possible curtailment of employment, the original Fair Labor Standards Act allowed the Secretary of Labor to approve wages at less than the statutory minimum for handicapped persons.

This particular exception to the minimum wage has been one of the single most important factors in the employment of severely disabled persons.

The only major revision to the special minimum wage provision of the Fair Labor Standards Act came in 1966, and in an attempt to upgrade the wages of handicapped workers while still not preventing the more severely handicapped workers from employment, Congress adopted several changes in section 14 of the Fair Labor Standards Act.

Those changes included that, where individuals whose earning capacity was impaired by severe disability were to be paid less than the regular minimum wage but not less than 50 percent of the minimum wage. The wages had to be commensurate with wages paid to nonhandicapped workers in the vicinity for essentially the same type, quality and quantity of work.

Further, where individuals could not engage in competitive employment because they were severely handicapped and that was verified by the State VR agency, the wage could be lower than the 50 percent minimun at that time, but not less than 25 percent. They still had to be paid a commensurate wage.

Finally, a provision was made for those persons so severely handicapped that their productivity was inconsequential. This group of handicapped persons work in work activity centers which, under the statute, are centers planned and designed exclusively for providing therapeutic activities for handicapped clients whose physical and mental impairment is so severe as to make their productive capacity inconsequential. They, too, must be paid a commensurate wage for any work performed.

The solicitor of DOL has taken the position that that definition is very specific, and that statutory revision is required to make any substantive change to the act.

The basic precept of the special minimum wage provision is that handicapped workers be paid wages which are commensurate with those in the vicinity for essentially the same type, quality, and quantity of work. This assures handicapped workers parity with nonhandicapped workers.

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H.R. 2676 will not diminish this fundamental right under the law, and it will maintain the commensurate wage concept for all covered handicapped workers.

The system has changed. When section 14(c) of the Fair Labor Standards Act was changed in 1966, sheltered workshops primarily served physically disabled populations. According to a 1979 DOL study, the percentage of workers with mental handicaps has now increased from 78 percent in the early seventies to 83 percent, while the percentage of persons with physical disabilities dropped from 13 to 10½ percent.

Today less than 50 percent of the certificates for sheltered workshops are for work activity centers. But more than 70 percent of the workers in work activity centers. So what we have now is a system designed for the minority and applied to the majority of workers.

Most of the changes in the population served in sheltered workshops have been due to deinstitutionalization through the decade of the seventies, and an increased acceptance of handicapped persons in our society.

For several years, facilities have been concerned that DOL's regulatory requirement under section 14(c) that work activity centers must be physically segregated from sheltered workshop clients. Many facilities have been cited for violating this provision. But facility managers believe that the requirement is contrary to rehabilitation objectives for work activity center clients, that it limits productivity and earnings, that it's contrary to the spirit of section 504 of the Rehabilitation Act.

This artificial barrier denies the more severely disabled the opportunity to work with less severely disabled persons or with nondisabled persons. It denies them the right to normalization and to a least restricted environment.

There are currently some 8,000 certificated programs to 4,800 sheltered workshops that the Department of Labor administers. Application process is burdensome. The paperwork for each application is difficult for the workshop and for DOL. Enforcement of section 14(c) has had to concentrate on technical compliance with paperwork, and it leaves little time to deal with enforcement and monitoring of the more substantive issues.

The complexity of certificates does not translate into better enforcement of the basic provisions of the law or provide for better pay or more jobs. Simplification of the act could drastically reduce the number of certificates issued and allow DOL staff to concentrate their efforts on ensuring that workshops are making proper wage payments rather than seeing if certificates are being filed properly.

We have entered for the record the General Accounting Office report of several years ago that studies this issue. I would just like to make a couple of comments from that report.

The GAO noted that:

> • • • However, the law's provision for paying handicapped workers in sheltered workshops, a fixed subminimum wage has not assured a minimum standard of earnings.

The report continued:

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• • • We believe that Congress should eliminate the Federal policy mandating a guaranteed subminimum wage for handicapped workers in sheltered workshops.

Eliminating the subminimum wage guarantee would result in few changes from the present sheltered workshop operating practice.

If the Federal subminimum wage guarantee was eliminated, sheltered workshops would still be required to base the workers' wages on the commensurate wage principle.

The numerous exemption provisions would no longer be needed, and a single certificate could be used for each workshop.

As I indicated, the methods of providing training and employment in sheltered workshops has changed since the enactment of the amendments. The rehabilitation facilities have developed a more business oriented approach to providing employment, and in some cases it's often difficult to differentiate some workshop programs from small businesses.

Current wage and hour laws and regulations unnecessarily limit utilization of new programs in the industry. Today there are a wide variety of settings used for employment of severely disabled individuals. There are enclaves in industry and mobile work crews. It's not unusual for the majority of handicapped employees of a rehabilitation facility to be working outside the physical plant.

Supported work is a growing new concept where severely disabled can work, but only with appropriate ongoing support services.

We feel that H.R. 2676 would enhance the feasibility of success in these new services. So NARF is strongly recommending the passage of 2676, and we would respectfully recommend that the report language to the bill be written to clearly emphasize that the intent of the bill is to increase employment opportunities and upward mobility of handicapped workers.

We would also suggest that the Department of Labor be directed to increase its monitoring and enforcement of the commensurate wage provisions.

I thank you for this opportunity. If I can clarify any of my remarks, I'd be glad to.

Mr. MURPHY. Thank you.

[The prepared statement of James B. Ansley follows:]

PREPARED STATEMENT OF JAMES B. ANSLEY, ACTING EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Good morning, Mr. Chairman. My name is James Ansley and I am Acting Executive Director of The National Association of Rehabilitation Facilities. I want to especially thank you and Congressman Petri for holding this hearing today. Hopefully, it will be the beginning of bringing this important issue to resolution.

NARF is the national voluntary trade association made up exclusively of community based rehabilitation facilities. These facilities provide services to more than 400,000 persons annually. The broad range of services can include physical restoration and other medical services and a variety of vocationally oriented programs. This morning's discussion of wage payments for handicapped workers concerns the vocational programs. These facilities range from small work activities centers to large industrially based facilities. The vocational services provided can range from employment only to a wide variety of training, job readiness and placement programs.

NARF has been concerned for several years that the statutory provisions of the Fair Labor Standards Act that govern wages for handicapped workers unfairly segregates the non-severely handicapped from other workers, imposes an unnecessary

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burden on the employers, and generally does not recognize changes in the field of rehabilitation over the past twenty years. NARF is here today to testify in support of HR 2676.

NARF has brought these concerns to the Department of Labor, other Federal agencies, and to Congress in the past. In 1980, NARF asked the Department of Labor to consider changes in its regulations which would allow the more severely handicapped to work with higher functioning clients. Even though the Federal Interagency Coordinating Council recommended that sheltered workshop and work activities clients should be integrated, the Solicitor of the Department of Labor continues to interpret the statute (FLSA) as requiring segregation.

NARF brought this matter to the attention of the House Labor Standards Subcommittee and the Senate Labor Subcommittee. Senator Don Nickles, Chairman of the Senate panel introduced and held hearings on S. 2634 in 1982. That bill addressed only the issue of separation. A companion bill was introduced in the House by Congressman Petri. Based on testimony presented on S. 2634 and discussion with Congressional staff, it was decided that a bill based on recommendations by the General Accounting Office should be drafted. GAO had conducted a major study of these programs in 1981. That bill was introduced by Congressman Petri in 1983 as HR. 3091. We are glad, Mr. Chairman, that you were a co-sponsor of that bill.

It is our understanding that HR. 3091 was never moved in the 98th Congress because of the political sensitivity of the FLSA. We understood and reluctantly accepted that fact. That is a major reason we are so pleased that this hearing is being held today. It helps acknowledge that the issue to be addressed today is employment of handicapped persons and not just another wage-hour law issue. We hope that you will agree that the bill being discussed this morning will eliminate the unnecessary segregation of severely handicapped persons and allow some upward mobility while reducing an unnecessary administrative burden.

The Fair Labor Standards Act was passed in 1938 to provide workers with a decent wage and to protect them from exploitation. It also set standards for hours worked, overtime and child labor. From the beginning, it was recognized that many handicapped individuals could not produce at the same level as non-handicapped persons. It was felt that many handicapped persons could not be employed if they had to be paid the full minimum wage. To prevent this possible curtailment of employment, the original Fair Labor Standards Act allowed the Secretary of Labor to approve wages at less than the statutory minimum for handicapped persons. This provision was utilized primarily by sheltered workshops for the physically disabled and workshops for the blind. During the 1940's, 1950's and into the 1960's these workshops were more often than not the only source of employment for physically handicapped persons. There was little, if any, consideration given to employment of persons with mental disabilities until the mid-to late 1960's.

The only major revision to the special minimum wage provision of the FLSA came in 1966. At that time organizations representing the blind argued that there should be a guaranteed minimum wage for the blind and that it should automatically increase to the full minimum wage within four years. The blind organizations suggest 50 percent of the regular minimum wage as a starting point with automatic increases to 100%. Congress, through hearings held at that time, recognized that there were many severely handicapped persons who could not produce at that level and that to adopt such a guaranteed minimum would deny jobs to most handicapped workers in sheltered workshops. In an attempt to upgrade the wages of handicapped workers while not preventing the more severely handicapped from working, Congress adopted the following changes in Section 14 of the FLSA:

1. The Secretary of Labor was authorized to issue certificates allowing individuals whose earning capacity is impaired by age, physical or mental deficiency or injury to be paid less than the regular minimum wage but not less than 50 percent of the minimum wage. The wages must be commensurate with wages paid non-handicapped workers in the vicinity for essentially the same type, quality and quantity of work.

2. If a person is multiple handicapped or so severely handicapped that they cannot engage in competitive employment and the severity of the handicap is verified by the state vocational rehabilitation agency, the wage may be lower than 50 percent but not less than 25 percent of the statutory minimum. The handicapped worker would still have to be paid a wage commensurate with that paid a non-handicapped person doing the same work.

3. Handicapped persons engaged in work incidental to evaluation or training programs do not have a guaranteed minimum but must still be paid a commensurate wage.

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4. Provision was also made for those persons so severely handicapped that their productivity is "inconsequential". This group of handicapped persons can work in "work activities centers" which, under the statute, are centers "planned and designed exclusively for providing therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential." They must also be paid a commensurate wage for any work they perform.

The above provisions in Section 14(c) of the FLSA are administered by the Special Minimum Wage Division of the U.S. Department of Labor. There are two sets of regulations providing further guidelines and requirements for compliance with Section 14(c). One set of regulations (29 CFR Part 525) deals with employment in sheltered workshops and the other (29 CFR Part 524) deals with employment in competitive jobs. Under these regulations, DOL issues certificates allowing payment of the special minimum wages. There are five types of certificates that can be issued and there are substantial paperwork and recordkeeping requirements. They are detailed in the excerpts from the September 28, 1981 Government Accounting Office Report which is attached to this testimony.

COMMENSURATE WAGES

The basic precept of the special minimum wage provisions in the Fair Labor Standards Act is that handicapped workers be paid wages which, ". . . are commensurate with those in the vicinity for essentially the same type, quality and quantity of work." This assures handicapped workers parity with non-handicapped workers.

Under the current law all handicapped workers covered by the FLSA must be paid at least the commensurate wage, or a higher wage if required by a regular work program or an individual certificate. These certificates also have other restrictions.

H.R. 2676 would maintain the commensurate wage concept for all covered handicapped workers. H.R. 2676 would maintain the commensurate wage concept for all covered handicapped workers. H.R. 2676 would strengthen the commensurate wage provisions by removing the other provisions of Section 14(c) which have been shown to serve little if any purpose.

POPULATION CHANGES

When Section 14(c) of the FLSA was changed in 1966, sheltered workshops primarily served physically disabled persons. While some mentally disabled persons were being served and employed, they were a small minority. In 1975 *The Greenleigh Study*, a comprehensive study on sheltered workshops, reported that when primary and secondary disabilities are considered, 81 percent of the clients sampled have mental retardation or mental illness as either their primary or secondary disability. According to a 1979 DOL study, the percentage of workers with mental handicaps increased from 78 percent in 1973 to 83 percent in 1976 while the percentage of persons with physical disabilities dropped from 13.5 to 10.5 percent during the same three year period.

Corresponding with the dramatic increase in the number of mentally disabled clients was an even more dramatic increase in the number of work activities centers. There was a 381 percent growth in WACs between 1968 and 1976 while regular workshops programs grew 101 percent during that time. As a percentage of the total number of clients served under the major certificates, regular workshops served 44 percent in 1968 but only 23 percent in 1984, while WACs served 71 percent of the clients in 1984 compared to 36 percent in 1968.

Today just under 50 percent of the certificates for sheltered workshops are for WACs but over 70 percent of the workers are in WACs.

Most of the changes in the population served in sheltered workshops have been due to deinstitutionalization and increased acceptance of handicapped persons in our society. In the late 1960s and early 1970s state institutions for the mentally ill and mentally retarded had their population reduced by half and more. It has been found that most of the former patients and residents of these institutions can live and work in the community with proper supportive services. These services usually include some form of group living arrangements and sheltered or supported employment. Many are eventually able to work in competitive jobs and live on their own. However it often takes years of adjustment, training, and socialization before they are ready for that level of independence and there are still many for whom sheltered employment will be their maximum level of achievement for the foreseeable future.

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The level of severity of the disability often has a direct relationship to the productivity. The persons served by rehabilitation facilities today often have very limited intellectual capacity. While not technically physically handicapped, many mentally and emotionally disabled persons have difficulty with some physical activities such as fine motor skill. Rehabilitation facilities are increasingly working with chronically mentally ill. While these persons do not outwardly appear to be disabled or handicapped and their productivity is often at normal levels, their productivity and behavior can be dramatically affected by short- or long-term periods of depression or psychotic episodes. Their productivity may fall from 100 percent to 35 percent and back up again within a matter of days or weeks. Populations such as this need the flexibility that would be allowed under H.R. 2676 rather than the rigid certificate system now in place.

REQUIRED SEGREGATION

For several years, rehabilitation facilities have been concerned about DOL's regulatory requirement under Section 14(c) of the FLSA that work activity center clients must be physically segregated from sheltered workshop clients. Several facilities have been cited by DOL for violating this requirement.

The regulations issued under Section 14(c) of the FLSA require separation of WACs from other workshop clients. Many facility managers believe the requirement is contrary to the rehabilitation objective for work activity center clients, limits productivity and earnings, and is contrary to the spirit of Section 504 of the Rehabilitation Act. This artificial segregation denies the more severely disabled the opportunity to work with less severely diabled persons or with nondisabled persons. The Department of Labor might argue that through utilization of different types of certificates you could allow some more severely disabled to work with other nondisabled or less disabled persons. However, there would still be limitations as to numbers or guaranteed minimum in some of these cases and a lot of very unnecessary paperwork and restrictions would be required.

In fiscal year 1984, DOL reports that only 13.6 percent of all handicapped workers in workshops were in regular programs. The other 86.4 percent were in WAC, in evaluation or training or were covered by an individual certificate.

When the 1966 Amendments were added to the FLSA, it was anticipated that work activities centers were to be a small exception to the general rule. Deinstitutionalization and the realization that when persons with very severe limitations could do some work lead to a dramatic growth in work activities centers and utilization, the other exceptions to the regular program with a 50 percent guaranteed minimum.

The Solicitor of DOL has taken the position that this segregation is a statutory requirement and the statute must be amended in order to eliminate it.

THE COMPLEXITY OF THE STATUTE AND REGULATIONS INHIBITS EFFECTIVE ENFORCEMENT

There are currently 8222 certificated programs issued annually to 4814 sheltered workshops. Each application requires accompanying documents. The paper work for each application is burdensome to the workshop and to DOL. Enforcement of Section 14(c) has had to concentrate on technical compliance with the other paperwork required by the multiplicity of certificates and other requirements of the regulations.

DOL has a staff of only four persons in Washington responsible for the 14(c) program. They are also responsible for the special minimum wage program for youth, apprentices and homeworkers. In the regional offices, there is usually only one person who is responsible for the 14(c) program. Compliance reviews are usually conducted by compliance officers who review sheltered workshops only a few times a year.

The number of certificates that must be reviewed by each regional specialist is tremendous. There are up to 1900 workshops in a single region. While there are a significant number of on-site compliance reviews, most of the certificates receive only cursory review of the annual application. There have been times where there was a two-year lag between submission of a renewal application and its final approval.

This complexity of certificates does not translate into better enforcement of the basic provisions of the law or provide for better pay or more jobs for disabled workers. A major GAO study found that the administrative burden of the certification process overshadowed DOL's investigation and compliance responsibilities.

Simplification of the Act could drastically reduce the number of certificates issued and allow DOL staff to concentrate their efforts on insuring that workshops are

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making proper wage payments rather than seeing if certificates are being filed properly.

RECENT MAJOR STUDIES FOR CONGRESS AND THE FEDERAL GOVERNMENT HAVE RECOMMENDED SIMPLIFICATION OF SECTION 14(C)

There have been several major studies of sheltered workshops since 1975. Two of the studies made very specific recommendations to simplify Section 14(C) of FLSA and the others contain supporting data for the recommended changes.

GENERAL ACCOUNTING STUDY

The most recent study was conducted by GAO for former Congressman Barry M. Goldwater, Jr. Goldwater asked for GAO to investigate the administration and enforcement of FLSA in workshops and the administration of the federal procurement program that gives preferential treatment to services and commodities supplied by sheltered workshops. Goldwater requested the investigation in July 1979. GAO conducted a thorough investigation, spending over two years on the study. The GAO report (HRD-81-99), made significant findings and recommended major changes in the FLSA as it affects sheltered workshops to help improve its enforcement and effectiveness.

The GAO study found that the Congressional intent in 1966 to provide a guaranteed wage of 50 percent of the statutory minimum had not been realized. This had been due almost exclusively to the large influx of more severely handicapped persons into workshop programs whose low productivity necessitates the use of WAC certificates of individual rates below the 50 percent level. GAO found that only 17 percent of the handicapped workers employed under DOL certificates in 1979 were eligible for the special 50 percent minimum wage.

The GAO study concluded that: "The primary purpose of Section 14(c) of the Fair Labor Standards Act of 1983, as amended, was to encourage the maintenance of a minimum standard of earnings for handicapped workers and to discourage employers from exploiting such workers by paying them low wages. The law's provision that sheltered workshop must pay handicapped workers based on their individual productivity and the prevailing industry wage, provides a reasonable Federal wage standard for assuring that handicapped workers in sheltered workshops are paid fairly. However, in the law's provision for paying handicapped workers in sheltered workshops a fixed subminimum wages has not assured a minimum standard of earnings because only those whose wages, based on their individual productivity, would seldom fall below the Federal subminimum are employed under certificates requiring the Federal subminimum wage guarantee. Labor issued exemptions for 83 percent of the workshops population in fiscal year 1979.

"In view of the staff resources used for reviewing applications and issuing certificates for the various exemption categories and the low number of handicapped workers benefiting from the subminimum wage guarantee, we believe that Congress should eliminate the Federal policy mandating a guaranteed subminimum wage rate for handicapped workers in sheltered workshops. Eliminating the Federal subminimum wage guarantee would result in few changes from the present sheltered workshop operating practices and procedures as far as financial management and worker compensation systems are concerned. Handicapped workers in sheltered workshops are already paid based on their individual productivity (under the commensurate wage principle). If the Federal subminimum wage guarantee requirement was eliminated, these sheltered workshops would still be required to base the workers' wages on the commensurate wage principle. However, elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The numerous exemption provisions would no longer be needed and a single certificate could be used for each workshop.

"The modification of the Fair Labor Standards Act, based on our recommendation to the Congress, would read: Section 14(c)(1) is amended to read as follows:

"The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earnings or productive capacity is impaired by age or physical or mental deficiency applicable under Section 6 of their Act and which are commensurate with those paid non-handicapped workers in the industry in the vicinity of essentially the same, quality and quantity of work and which are related to worker's productivity. (Note: Both Section 14(c)(2) and section 14(c)(3) of the Act (29 U.S.C. 214(c)(1) would be deleted.)"

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TESPA FINAL REPORT

In 1981 the Office for the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services published a report entitled "Training and Employment Services Policy Analysis (TESPA): Training and Employment Service for Handicapped Individuals in Sheltered Workshops." This report was prepared by HHS to respond to the Congressional interest in sheltered workshops programs. A number of issues were addressed in the report including community support, independent living and civil rights. The development of a comprehensive wage policy proposal was a major goal. The TESPA report found that the 1966 amendments to Section 14(c) of the FLSA were complex, were implemented by even more complex regulations and produced ". . . an administrative nightmare for DOL compliance staff and sheltered workshops managers." The TESPA Report concluded that:

"Section 14(c) of the Fair Labor Standards Act should be amended to eliminate the five currently authorized certificates and substitute provision for single certificate permitting payment of wages at less than the FLSA minimum rate established under Section 6 of the FLSA. The amendment should stipulate the such payment would be permissible at a level determined to be commensurate with rates paid to non-handicapped workers in the vicinity performing essentially identical work."

NEW DIRECTIONS IN REHABILITATION

During the twenty years since Section 14(c) was last amended, the field of rehabilitation has goen through many changes. In the 1960's sheltered employment was considered the expected outcome for the physically handicapped persons who were being served. As noted earlier, the population served by rehabilitation facilities has changed dramatically in these twenty years.

The methods of providing training and employment services has also changed. Rehabilitation facilities have developed a more business oriented approach to providing employment. It is often difficult to differentiate some programs from small businesses were it not for the workers. Work on federal contracts have only become generally available for severely disabled persons in rehabilitation facilities in the last 12 years.

Where as most employment for severely disabled persons used to be only in sheltered workshops, today a wide variety of settings are used. There are enclaves in industry and mobile work crews among other methods. It is not unusual for the majority of the handicapped employees of a rehabilitation facility to be working outside the facility. Supported work is a growing concept where severely disabled persons can work but only with appropriate ongoing support services. Many of these programs are being done at regular, for-profit work sites.

While current wage-hour laws and regulations have not prevented utilization of these new programs, often the programs have operated in spite of the problems caused by various wage-hour restrictions.

RECOMMENDATION

NARF strongly recommends the passage of H.R. 2676. The bill adopts the language recommended by the General Accounting Office. Under the bill Section 14(c) would be amended to read: "(c) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall be regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which (1) are lower than the minimum wage applicable under Section 6, (2) are cummensurate with those paid to non-handicapped workers, employed in the vicinity in which the workers under the certificates are employed for essentially the same type, quality and quantity of work and (3) are related to the worker's productivity."

NARF also recommends that report language be written to accompany the bill that would emphasize that the intent of the bill is to increase employment opportunities and upward mobility of handicapped workers, especially the more severely disabled. The Department of Labor should be directed to develop new regulations that would reinforce the commensurate wage concept that all handicapped workers should be paid equitable wages based on their individual productivity. The Department of Labor should be directed to closely monitor and enforce the commensurate wage provisions. DOL should establish positive means of assisting employers in developing jobs that increase individual productivity and earnings power and to find better and more accurate ways to measure individual productivity.

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ATTACHMENT E

BY THE COMPTROLLER GENERAL

Report To The Honorable Barry M. Goldwater, Jr. House Of Representatives OF THE UNITED STATES

Stronger Federal Efforts Needed For Providing Employment Opportunities And Enforcing Labor Standards In Sheltered Workshops

Certain of the Fair Labor Standards Act's provisions for handicapped workers in sheltered workshops create an unnecessary administrative burden for the Department of Labor and sheltered workshops.

Labor needs to strengthen its enforcement of other Fair Labor Standards Act provisions for handicapped workers employed in sheltered workshops.

Also, improved procedures are needed under a federally sponsored procurement program for increasing employment opportunities for the handicapped in sheltered workshops. Specifically, better procedures are needed for

- evaluating employment opportunities created by the program,
- notifying affected parties of proposed actions, and
- monitoring workshops' compliance with eligibility requirements.

GAO makes several recommendations to the Congress and the Secretary of Labor for simplifying the administration of the Federal labor standards and strengthening their enforcement.

HRD-81-99
SEPTEMBER 28, 1981

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COMPTROLLER GENERAL'S REPORT TO THE HONORABLE BARRY M. GOLDWATER, JR. HOUSE OF REPRESENTATIVES

STRONGER FEDERAL EFFORTS NEEDED FOR PROVIDING EMPLOYMENT OPPORTUNITIES AND ENFORCING LABOR STANDARDS IN SHELTERED WORKSHOPS

D I G E S T

Sheltered workshops, established at the State and local levels, provide both training and employment for the physically and mentally handicapped population of our Nation. In July 1979, Congressman Barry M. Goldwater, Jr., asked GAO to review the role of sheltered workshops in (1) employing the handicapped and (2) operating in the competitive business community. GAO's subsequent study focused primarily on the administration and enforcement of the Fair Labor Standards Act's provisions relating to handicapped workers employed in sheltered workshops and the administration of a federally sponsored procurement program established by the Wagner-O'Day Act. Factors affecting the relationship between sheltered workshops and private industry were also addressed. (See pp. 7 to 9.)

Although the Federal Government has taken many actions to improve the employment opportunities and labor standards for the handicapped, GAO recommends that the Congress simplify the Fair Labor Standards Act's provisions and that Labor strengthen its enforcement efforts. Also, GAO recommends that the Wagner-O'Day Act's administration should be strengthened.

FEDERAL LABOR STANDARDS SHOULD BE SIMPLIFIED

The Fair Labor Standards Act, as amended, authorizes Labor to issue special certificates to sheltered workshops for employing handicapped workers at wage rates lower, but not less than 50 percent of the statutory minimum wage unless specifically exempt. Special exemptions are needed to prevent possible curtailment of employment opportunities for handicapped workers who are not able to produce at the subminimum wage rate.

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GAO's analysis of Labor's special certificates showed that congressional intent to encourage a minimum standard of earnings for handicapped workers has not been realized because 83 percent of the total workshop population was employed under Labor's special exemption certificates at the end of fiscal year 1979.

Due to the lower functioning level of many handicapped workers in sheltered workshops, GAO believes that strict application of the subminimum wage requirement may result in (1) unemployment rather than higher wages for many of these now exempt or (2) additional paperwork and administrative costs for justifying individual exemptions. The vast majority of sheltered workshop workers are now paid based on their individual productivity.

If the Federal subminimum wage requirement were eliminated, the workshops would still be required to base the workers' wages on individual productivity. Elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The many exemption provisions would no longer be needed, and a single certificate could be used to establish a workshop's eligibility to pay handicapped workers less than the minimum wage.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress amend the Fair Labor Standards Act to eliminate the provision that handicapped persons who are employed under special Labor certificates must not be paid less than 50 percent of the statutory minimum wage.

RECOMMENDATION TO THE SECRETARY OF LABOR

GAO recommends that the Secretary revise the Federal regulations to (1) require that each sheltered workshop establish and document a guaranteed wage minimum for each handicapped worker and (2) establish procedures for workshops to use in documenting each worker's guaranteed wage minimum.

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ENFORCEMENT OF FEDERAL LABOR STANDARDS SHOULD BE STRENGTHENED

For fiscal years 1977-79, Labor reported that 317 (or 60 percent) of the 524 workshops investigated had underpaid 11,482 handicapped workers about $2.7 million. GAO's analysis in five Labor regions showed that:

--Sheltered workshops often failed to pay wages based on an individual's productivity or to comply with the terms and conditions of an approved Labor certificate. (See pp. 38 and 39.)

--Problems existed in computing piece rates, establishing hourly rates, determining prevailing wage rates in local industry, and maintaining adequate records. (See pp. 32 to 37.)

--75 out of 105 different investigators made investigations in only 1 year, 23 in 2 years, and only 7 in 3 years, and none of the five regions reported spending more than one-half of a staff year investigating sheltered workshops. (See pp. 39 and 40.)

GAO believes that Labor's enforcement effort has been significantly weakened because it has excluded publicly operated workshops from its investigation process until a decision is made on the applicability of a 1976 Supreme Court ruling that the act's minimum wage provision did not apply to State and local government employees engaged in activities that are an integral part of traditional government services. (See pp. 43 to 45.)

The act's provisions concerning wages based on handicapped workers individual productivity cannot be enforced by Labor if the resulting wage rate exceeds the statutory minimum. As a result, handicapped workers may not be paid according to the act's provisions even though they receive the minimum wage or higher. (See pp. 41 to 43.)

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RECOMMENDATIONS TO THE SECRETARY OF LABOR

The Secretary should decide whether the requirements of the Fair Labor Standards Act should be applied to publicly operated sheltered workshops. Management control over the planning, implementation, and evaluation of the investigation process for sheltered workshops' compliance with the requirements of the Fair Labor Standards Act should be strengthened. (See pp. 46 and 47.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

GAO recommends that the Congress consider amending the act to extend Labor's authority for enforcing the provision that a handicapped worker's wages must be commensurate with those paid nonhandicapped workers. (See p. 47.)

ADMINISTRATION OF THE JAVITS-WAGNER-O'DAY PROGRAM SHOULD BE STRENGTHENED

Under the Wagner-O'Day Act, as amended, the Committee for Purchase from the Blind and Other Severely Handicapped is responsible for (1) approving suitable products or services for Federal Government procurement from sheltered workshops, (2) establishing the fair market prices, and (3) establishing rules and regulations for implementing the program (commonly referred to as the Javits-Wagner-O'Day program). (See pp. 51 to 54.)

Based on an analysis of the records for 185 commodities and services approved by the Committee for fiscal years 1977-79 and visits to 27 sheltered workshops participating in the Javits-Wagner-O'Day program, GAO believes that the Committee's administrative procedures should be strengthened. Public notification (in the Federal Register) of proposed additions to the list of goods and services to be procured from sheltered workshops does not provide current or recent Government suppliers with sufficient notice. (See pp. 58 to 64.)

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CHAPTER 2

FEDERAL LABOR STANDARDS FOR HANDICAPPED WORKERS IN SHELTERED WORKSHOPS SHOULD BE SIMPLIFIED

The Fair Labor Standards Act, as amended, established Federal labor standards for paying handicapped workers employed in sheltered workshops. Labor spends the majority of the resources it uses for administering and enforcing the act's special provisions for handicapped workers on a complex and time-consuming process for certifying sheltered workshops to pay less than the statutory minimum wage for handicapped workers. Furthermore, staff resources used for reviewing applications and issuing special certificates have greatly increased.

Our analysis of Labor's special certificates showed that the congressional intent to generally provide a guaranteed wage of 50 percent of the statutory minimum wage to handicapped persons working in a productive capacity in sheltered workshops has not been realized. Handicapped workers who would benefit most from the act's provision are excluded from coverage and only those whose wage rate would seldom fall below 50 percent of the statutory minimum were employed under certificates requiring the Federal wage guarantee. Less than 17 percent of the handicapped workers employed in sheltered workshops under Labor certificates, as of the end of fiscal year 1979, were eligible for the Federal subminimum wage guarantee. 1/

THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

The Fair Labor Standards Act (29 U.S.C 201 et seq.), enacted on June 25, 1938, established the principle of a nationwide minimum wage standard. In addition, the act provided standards for hours of work and child labor and established the Wage and Hour Division in Labor to administer and enforce the act's provisions. The act has been amended several times to increase the minimum hourly wage rate and the number of covered workers and provide for equal pay for workers performing equal work. In 1977, amendments established a minimum wage of $2.65 an hour, effective January 1, 1978, and further increases to $3.35 an hour by January 1, 1981. Labor reported that about 60.1 million workers were covered by the act's provisions as of the end of fiscal year 1979.

1/For reporting purposes, Labor collected information for the fiscal year ended September 20, 1979.

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Under the 1938 act, the Secretary of Labor was authorized to issue special certificates for paying handicapped workers at wages lower than the statutory minimum, as specified in such certificates. The Fair Labor Standards Amendments of 1966 (Public Law 89-601, 80 Stat. 830) substantially revised the act's provisions for paying handicapped persons at special minimum wages. The 1966 amendments were designed to encourage the maintenance of a minimum standard of earnings for handicapped workers and assure that these workers were not exploited through low wages. According to the amendments, handicapped workers must be paid wages based on their individual productivity in proportion to wages being paid nonhandicapped workers performing similar tasks in their locality. The amendments also established the principle of a subminimum wage standard (50 percent of the statutory minimum) for handicapped workers in sheltered workshops. To prevent curtailment of employment opportunities, the amendments provided authority for special exemptions permitting handicapped workers to be paid at wage rates lower than the Federal subminimum standard.

Section 14(c)(1) of the act provides that the Secretary of Labor, to the extent necessary to prevent the loss of employment opportunities, establish procedures for issuing special certificates for allowing individuals, whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, to be employed at wages which are lower than the statutory minimum wage established under section 6 of the act. Section 14(c)(1) also provides that handicapped persons employed under the special certificates must be paid wages which are not less than 50 percent of the statutory minimum wage and which are commensurate with wages paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

However, section 14(c)(2) provides that the Secretary of Labor may issue special certificates for employing handicapped workers at wages lower than the subminimum wage standard. According to regulations established by the Secretary and upon the approval of the State agency administering vocational rehabilitation services, special certificates may be issued to sheltered workshops for (1) employing handicapped workers on work which is incidental to training or evaluation programs and (2) multihandicapped persons or others whose earning capacity is so severely impaired that they are unable to engage in competitive employment. For any certificate issued under section 14(c)(2), the wages paid to each individual must be related to the worker's productivity.

In addition, section 14(c)(3) provides similar authority for the Secretary to issue special certificates to sheltered workshops for employing handicapped persons in work activities centers at wages less than the subminimum wage standard established under section 14(c)(1) of the act. Again, the Secretary must establish

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regulations providing that the wages paid individuals in work activities centers constitute equitable compensation. In this section, the term "work activities center" is defined as centers planned and designed exclusively for providing therapeutic activities for handicapped clients whose physical or mental impairment was so severe as to make their productive capacity inconsequential.

LABOR'S PROCESS FOR CERTIFYING SHELTERED WORKSHOPS

The Wage and Hour Division of Labor's Employment Standards Administration is responsible for administering the special provisions relating to the payment of wages to handicapped workers. Under its authority, Labor established separate procedures for issuing certificates authorizing special minimum wages for handicapped workers in sheltered workshops and in private industry. Labor's certification process for sheltered workshops is primarily designed to review and approve applications for paying handicapped workers less than the statutory minimum wage (now $3.35 an hour) and less than the statutory subminimum wage (now $1.67 an hour).

For certification purposes, Labor established two major classifications for sheltered workshops: a regular program workshop and a work activities center. A regular program workshop generally employs the more productive handicapped workers, and a work activities center employs severely handicapped workers with a lower productive ability. Only handicapped persons employed in a workshop having a regular program certificate are required to receive the Federal subminimum wage guarantee. Although the wage rate for a regular program certificate cannot be less than the subminimum wage, a higher rate not exceeding the statutory minimum can be set. Work activities center certificates are not required to set a guaranteed wage rate.

In addition, three other types of certificates can be granted for exempting handicapped workers from the federally guaranteed rate in a regular program workshop or from Labor's regulations on individual productivity in a work activities center. 1/ Handicapped persons may be employed under an evaluation certificate in a program which uses the medium of work for determining an individual's potential. A training certificate is used for employing individuals in a program using work for teaching a specific skill or for developing acceptable patterns of behavior in work situations. Also, individual rate certificates can be issued for employing individuals whose (1) handicapping condition and/or productive

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1/According to Labor's procedures, handicapped workers whose earnings regularly exceed 50 percent of the statutory minimum over a consecutive 3-month period cannot be employed in a work activities center, unless specifically exempt. (See p. 20.)

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capacity is so limited that the person is not able to earn the wage rate set for a regular program workshop or (2) earnings in a work activities center regularly exceed 50 percent of the statutory minimum wage for a recent consecutive 3-month period. Although handicapped persons employed in regular program workshops under evaluation, training, or individual rate certificates are exempt from the federally guaranteed subminimum rate, some certificates may provide for a specific wage rate (lower than the Federal guarantee) which must be paid by the workshop.

Generally, certificates are issued for 1 year and are renewable upon application. For a newly established workshop, a short-term certificate may be issued to allow the handicapped workers to establish their earning capacity. Handicapped workers may not be paid less than the applicable statutory minimum wage, or prevailing wage, before the effective date of the special certificate issued to the workshop. Each type of certificate, except for the individual rate certificate, applies to all handicapped persons employed in the workshop at the time of application and to new workers entering the workshop during the life of the certificate. It is not necessary to report workers who are terminated from employment or transferred to other jobs. A certificate may be canceled if (1) it was fraudulently obtained, (2) the terms were violated, or (3) it was no longer needed.

PAPERWORK REQUIREMENTS HAVE INCREASED

The amount of paperwork has increased substantially as the number of workshops and handicapped workers requiring exemptions increased. Paperwork includes (1) applications for the special certificates prepared by workshops and reviewed by Labor, (2) applications for special exemption certificates reviewed and certified by State vocational rehabilitation agencies, and (3) certificates prepared and issued by Labor officials. From fiscal year 1967-79, the number of workshops certified by Labor increased from 978 to 3,877 (a 296-percent increase), and the number of handicapped workers rose from 49,645 to 174,746 (a 252-percent increase). 1/ However, the number of certificates approved annually increased from 1,116 to 13,728, a 1,130-percent increase over the same period. Since fiscal year 1968, the certificates guaranteeing the Federal subminimum wage have only increased from 1,761 to 2,220 annually, a 26-percent increase. 2/ Thus, the majority of the increased paperwork has been caused by the need to exempt lower

1/Appendix IV shows the number of certified workshops and the number of handicapped workers employed in these workshops by fiscal year.

2/Fiscal year 1968 was the first full year of operation under the 1966 amendments.

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functioning handicapped workers from the requirements of the Federal subminimum wage guarantee.

During fiscal year 1967, Labor issued 1,116 certificates. Following the implementation of the 1966 amendments, each sheltered workshop could qualify for one, several, or all five types of special Labor certificates. As a result, the numbers of certificates issued and the resulting paperwork requirements increased substantially. During fiscal year 1968, Labor issued 6,171 certificates, an increase of 453 percent over the previous year. Of these, 1,761 certificates required the payment of the Federal subminimum wage or above, and 4,410 exempted workshops from paying the Federal wage guarantee. Of the 4,410, 630 were approved for work activities centers, 648 for evaluation and training, and 3,132 for individual rates. During fiscal year 1979, Labor issued 13,728 certificates--2,220 required workshops to pay the Federal subminimum or above and 11,508 exempted workshops from paying the Federal wage guarantee. Of the 11,508, 2,560 were for work activities centers, 1,663 for evaluation and training, and 7,285 for individual rates.

In addition to the increases in the number of certificates issued annually, the paperwork burden has also increased due to the different applications which must be filed with Labor regional offices and State vocational rehabilitation agencies, especially for the increased number of special exemptions requested for evaluation and training programs and individual rates. Labor, through its regional offices, processes the applications submitted by sheltered workshops for the five types of special certificates. Generally, one or more individuals are responsible for reviewing applications and issuing certificates in each regional office. According to the responsible Labor officials in four of the five regions we visited, 1/ the time spent for the certification process ranged from about 0.5 to 1.5 staff years, depending on the number of workshops in each region. For these regions, the number of certified workshops ranged from 292 to 677 as of the end of fiscal year 1979.

Every workshop requesting a special certificate for operating a regular program workshop or a work activities center must submit annually a single application providing a wide range of information about its general operating practices and wage structure. Among other things, the workshop must furnish (1) a description of the services offered, (2) the types of employment provided, (3) the nature of the disabilities of the workers employed, (4) earnings data on handicapped workers, and (5) certain financial information relating to the work program. Additionally, each workshop requesting a special certificate for operating an evaluation and/or

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1/Labor officials in one region declined to estimate the time spent on the certification process.

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training program must submit annually a separate application; a separate application must also be submitted for each individual rate certificate requested.

Also, applications for evaluation, training, and individual rate certificates must be filed with the State vocational rehabilitation agency if the requested wage rate is less than 50 percent of the statutory minimum wage. For evaluation and training programs, the State vocational rehabilitation agency must prepare an authorization stating that the program meets its standards, substantially equivalent standards, for such programs before the workshop's application can be submitted to Labor. The State rehabilitation agency must also certify on each application for an individual rate that the individual's earning capacity is so severely impaired that he or she is unable to engage in competitive employment. Although applications for evaluation and training certificates must be submitted annually, requests for renewing individual rate certificates may be included with the information on the applications filed annually for a regular program certificate. Therefore, the increased paperwork for Labor regional offices, State vocational rehabilitation agencies, and workshops is directly related to the number of lower functioning handicapped workers who are exempt from the requirements of the Federal subminimum wage guarantee.

MAJORITY OF HANDICAPPED WORKERS ARE EXEMPT FROM FEDERAL SUBMINIMUM WAGE GUARANTEE

Special treatment of the handicapped was recognized because many individuals cannot successfully compete for jobs at the statutory minimum wage because of age or physical or mental disabilities. If a worker's productivity is low, then the worker's earned wages will be low. Arbitrarily raising a worker's wages without a corresponding increase in his or her marginal productivity would place his or her pay above the value of his or her contribution--this situation which would make it unprofitable for a workshop to hire or keep the worker. To prevent curtailment of employment opportunities for such individuals, the special provisions were included in the 1966 amendments to induce employers to hire handicapped workers who were not capable of earning the statutory minimum wage because of low productivity. Similarly, special provisions were also included to provide sufficient flexibility for employing severely handicapped workers at wage rates lower than the statutory subminimum wage standard established by the 1966 amendments.

Section 605 of the 1966 amendments required that Labor study the wage payments of handicapped workers in sheltered workshops, including the feasibility of raising their existing wage standards in sheltered workshops. Labor's report, sent to the Congress in September 1967, concluded that the congressional intent to substantially raise the wages of handicapped workers in sheltered workshops

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through the special provisions of the 1966 amendments had not been realized. 1/ According to the report, the requirement that the minimum wage for handicapped workers in sheltered workshops should be at least 50 percent of the statutory minimum wage had not significantly affected the wage structure for these workers. The report pointed out that about one-half of all handicapped workers in sheltered workshops earned less than 50 percent of the statutory minimum 2 years before the 1966 amendments and in 1967 after the effective date of the amendments. According to the report, the 50-percent requirement did not have a discernible effect because about half of the handicapped workers were covered under one of the special exemption certificates (training or evaluation, individual rate, or work activities center) and the other half were earning at least 50 percent of the statutory minimum before the 1966 amendments. The study also concluded that increases in the statutory wage rate for handicapped workers under the act would probably increase the number of work activities centers (to which a specified minimum wage is not applicable) rather than increase the wages of handicapped workers.

Since the enactment of the 1966 amendments, the statutory minimum wage has increased from $1.40 to $3.35 an hour, as of January 1, 1981. While the total handicapped population employed in sheltered workshops has increased more than 250 percent since the amendment's provisions were implemented, the number of workers covered by the subminimum wage guarantee has increased less than 15 percent. In fact, the percent of the total workshop population covered by the subminimum wage guarantee has decreased or remained constant each year since the passage of the amendments. 2/ For the first full year of implementation (1968), about 53 percent of the 47,900 handicapped workers in sheltered workshops were covered by the Federal subminimum wage standard. Of the 174,746 handicapped workers in sheltered workshops at the end of fiscal year 1979, less than 17 percent were covered by the subminimum wage guarantee.

Although the other 83 percent were employed under one of the four special exemption certificates, the 1966 amendments provide that each handicapped worker must be paid wage rates, based on his or her individual productivity, commensurate with those paid nonhandicapped workers performing similar tasks in their locality. Thus, all handicapped workers are protected against the payment of arbitrarily low wages by sheltered workshops.

1/U.S. Department of Labor, Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act, Washington, D.C., September 1967, page 15.

2/Appendix V shows the number of handicapped workers employed in sheltered workshops by fiscal year and type of Labor certificate.

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Handicapped workers exempt from Federal subminimum wage guarantee under evaluation, training, and individual rate certificates

The special certificates for evaluation and training programs and individual rates permit sheltered workshops to employ handicapped workers, regardless of their productive capabilities, in a regular program workshop without being required to pay each worker at least 50 percent of the statutory minimum wage. The number of handicapped workers under regular, evaluation, and training programs and individual rate certificates increased from 34,904 in fiscal year 1968 to 57,729 in fiscal year 1979 (a 65-percent increase). However, only 3,742 of the 22,825 increase was attributable to expanded coverage for handicapped workers under a regular program or individual rate certificates requiring a wage rate of at least 50 percent of the statutory minimum. Thus, the majority of the increase was for handicapped workers employed under certificates which did not require payment of the Federal subminimum wage rate.

Although evaluation and training certificates were intended for handicapped workers engaged in work which was incidental to training or evaluation programs, workshops may also use these certificates to reduce the frequency of paying newly employed handicapped workers the Federal guaranteed subminimum wage. These workers often do not remain in the workshop after the specified evaluation and training periods end. In analyzing the relationships among evaluation, training, and regular work programs, a recent study of sheltered workshops stated that:

> "In many cases, the programs were found to be virtually indistinguishable, especially in those cases--which were the majority--where the remunerative employment program received primary emphasis." 1/

From fiscal year 1968 to fiscal year 1979, the number of handicapped workers covered by evaluation and training certificates increased from 6,886 to 22,493, a 227-percent increase. If an individual worker's productivity does not exceed the Federal guaranteed subminimum wage rate by the end of the training or evaluation period, workshop officials must decide whether to (1) increase (subsidize) the worker's wages to the Federal subminimum rate under the regular program certificate, (2) employ the worker under an individual rate certificate, (3) move the worker to a work activities center, or (4) terminate the worker's employment.

1/Greenleigh Associates, Inc., The Role of the Sheltered Workshops in the Rehabilitation of the Severely Handicapped, Volume II, July 1975, page 78.

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Individual rate certificates are also used for providing the flexibility to employ handicapped workers in a regular program workshop although the workers are not able to earn the guaranteed subminimum wage rate. The individual rate allows the the workshop to set a lower wage rate for each worker. The number of workers employed under individual rate certificates at rates lower than the Federal subminimum increased from 2,554 to 6,030, a 136-percent increase. The alternative to the use of special certificates for evaluation and training programs and individual rates may be the loss of employment opportunities for handicapped persons.

Handicapped workers exempt from the Federal subminimum wage guarantee under work activities center certificates

As pointed out by the 1967 Labor study, the number of work activities centers receiving special certificates has increased substantially. In fiscal year 1968, there were 513 workshops certified as work activities centers, accounting for 12,996 of the total handicapped workshop population. The number of work activities centers increased to 3,079, employing 117,017 handicapped workers by the end of fiscal year 1979. In contrast, the number of workshops covered by a regular program certificate increased from 668 to 1,689 during the same period.

Work activities centers, a concept formally established by the 1966 amendments, were defined as "centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential." Under its certification process, Labor established several criteria which must be met in order to qualify as a work activities center. For example, a work activities center must be an entire sheltered workshop or a physically separated department of a workshop having an identifiable program. It must provide separate supervision of workers and maintain separate records and be operated exclusively for providing therapeutic activities for handicapped workers.

Based on our analysis of operating practices of 38 sheltered workshops we visited (including 21 work activities centers), we believe that the definition in the 1966 amendments does not properly describe current work activities centers' operations. Our analysis showed that Labor's procedures and practices for distinguishing between regular workshops and work activities centers have created an artificial distinction among types of sheltered workshops which cannot, in many instances, be substantiated by current sheltered workshop operating practices. The majority of work activities centers we visited did not appear to exclusively provide therapeutic activities, and it did not appear that the production of most handicapped workers was inconsequential.

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Labor monetary criteria do not measure inconsequential productive capacity

To measure inconsequential productive capacity, Labor developed monetary standards (ceilings) for the average annual productivity and earnings of handicapped workers to evaluate whether a sheltered workshop or separate department of a workshop qualifies as a work activities center. The current ceiling for average annual productivity is $1,775 a year and for earnings it is $1,275 a year. The monetary standards are adjusted for each increase in the statutory minimum wage by increasing the monetary ceiling by the same percentage as the increase in the minimum wage.

In developing the monetary standards, Labor officials assumed that inconsequential productive capacity may be related to an average earning potential of 25 percent of the statutory minimum wage. Based on this assumption, Labor's monetary standards, as described below, appear to provide a reasonable basis for classifying a sheltered workshop or a separate department of a sheltered workshop as a work activities center.

> Labor's computation of average annual earnings is based on the assumption that the average handicapped worker will work about 1,500 hours a year (30 hours a week for 50 weeks) at an average hourly earnings rate of 25 percent of the statutory minimum wage. The standard for the average annual productivity (earned income of the work activities center) is determined by marking up (by 25 percent) average annual earnings to account for overhead costs in excess of the labor rate for work performed by the work activities center.

However, Labor's procedures for collecting the data from the sheltered workshops do not provide an accurate or reliable measure of a workshop's compliance with the established monetary requirements. Labor permits the sheltered workshops to report the average number of handicapped workers in the work activities center on the last day of each quarter for the previous fiscal year for measuring the average annual earnings and productivity of the handicapped workers. Although the monetary standards are based on a 1,500-hour work year, most handicapped workers in the work activities centers we visited worked considerably fewer hours. In all instances where a significant number of handicapped persons worked less than 1,500 hours, the use of the average number of handicapped workers to calculate average earnings and productivity significantly understates the workshop's computation of average annual earnings and productivity, as described in the following hypothetical example.

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Handicapped workers in a work activities center having an average annual earnings and productivity of $1,100 and $1,600, respectively (under current Labor procedures) may only be employed for an average of 1,000 hours a year (compared to the 1,500 hours used for computing the Labor standards). Assuming the average earnings and productivity would increase proportionately, average earnings and productivity would equal $1,650 and $2,400, respectively, if the handicapped worker were employed for an average of 1,500 hours a year.

Thus, workshops may now qualify as work activities centers even though the average productive capacity of the handicapped workers might exceed the 25-percent rate on which the Labor standards for measuring inconsequential productive capacity are based. In the above-mentioned example, the average earning rate equaled $1.10 an hour. The Labor standard was based on a rate of $0.84 an hour (25 percent of $3.35). At an annual average of 1,000 hours worked, the work activities center will meet the Labor standard. However, the center will not meet the standard if the averages are based on an average of 1,500 hours worked.

Labor also prohibits individual workers from being employed under a work activities center certificate if their individual productivity substantially exceeds the average of the limits established for the Labor monetary standards. According to Labor guidelines, handicapped workers whose productivity substantially exceeds the average may be covered under an individual rate certificate in unusual cases to avoid extreme hardship. However, Labor considers that a worker's productivity substantially exceeds the average only where the earnings are regularly more than 50 percent of the statutory minimum wage for a recent consecutive 3-month period. Our analysis of payroll and related documents for 2,055 workers employed in the 21 work activities centers we visited showed that about 30 percent had average hourly wage rates between 25 and 50 percent of the statutory minimum wage.

However, the annual earnings for most of these workers did not exceed the maximum allowable only because the total hours worked were significantly lower than the 1,500 used for computing the standard. Thus, Labor's process for certifying work activities centers results in many individuals being retained even though their hourly wage rate exceeds Labor's criteria (25 percent of the minimum wage) for measuring inconsequential production.

During our fieldwork, we visited 21 work activities centers in nine States. Six were separate workshops and 15 were part of a larger sheltered workshop. Private nonprofit corporations operated 16 of the work activities centers and 5 were publicly operated.

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According to information submitted to Labor, the 16 privately operated work activities centers qualified under the established monetary standards. Since June 24, 1976, publicly operated workshops were not required to apply for renewal certificates; therefore, information was not available for these workshops. (See pp. 43 to 45.)

To test the validity of Labor's procedures for collecting data for measuring average annual earnings and productivity, we accumulated the hours worked by 7 of the 16 work activities centers. We were not able to collect sufficient information at the other nine workshops because the available records did not (1) differentiate between handicapped workers employed in a center and those employed in a regular workshop program, (2) maintain paid hours, (3) maintain separate information on dollar volume of sales for the work activities center, or (4) permit data to be retrieved within a reasonable time frame.

For the seven work activities centers, we converted the total hours worked into full-time equivalents by dividing the total hours by 1,500 hours in order to evaluate each center's performance on a basis consistent with Labor's standards. Based on our cursory analysis, it appears that the average earnings and/or productivity for four of the seven workshops would exceed Labor's standards if full-time equivalents rather than the average number of workers were used. More important, our analysis shows that the inconsistencies between Labor's procedures for collecting data from the workshops and computing the average earnings and productivity may induce workshops to arbitrarily limit the number of hours worked by a handicapped person or an individual worker's pay to avoid exceeding the required productivity or earnings limits.

Differences between regular program workshops and work activities centers appear minimal

Although a workshop, or department of a workshop, cannot be classified as a work activities center unless it meets all Federal criteria, including physical separation from a regular program workshop, maintenance of separate records, and separate supervision of handicapped workers, our analysis of 21 work activities centers' programs indicated that the Federal criteria were sometimes not complied with. Of the 21 work activities centers we visited, 15 were classified as separate departments of a sheltered workshop. Of these 15 work activities centers, 4 were operating in a separate room, building, or location from the regular work program and 7 were physically separated by an aisle or temporary barrier in the same room as the regular workshop program. Four were not physically separated; work activities center and regular program workers were commingled.

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Also, the general goal of providing sheltered employment opportunities for severely handicapped workers in work activities centers does not appear to be consistent with the congressional intent. According to the Senate Labor and Public Welfare Committee report 1/ on the bill which became Public Law 89-691, work activities centers should be planned and designed exclusively for providing therapeutic activities where the focus is on teaching basic living skills to handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. According to the Senate report, work activities centers may include any purposeful activity as long as work or production is not the main purpose.

Although the level of productivity for individual handicapped workers was usually much lower than that of handicapped workers in a regular workshop program, the handicapped workers employed in the 21 work activities centers we visited were generally employed in a productive capacity for extended time periods. For example, workers in the work activities centers visited were involved in such productive activities as manufacturing wooden tent pegs, surveyor pegs, wooden planters, sponges, scrubbers, and wooden pallets; assembling bottle mops and ballpoint pens; grounds maintenance, janitorial services, and commercial mailing services; recycling aluminum and plastic and paper waste products; and packaging various products. At most work activities centers we visited, handicapped persons were employed on the same jobs or types of jobs as workers employed in the regular program workshop.

Of 158 sheltered workshops participating in the Javits-Wagner-O'Day program during fiscal year 1979, a federally sponsored procurement program (see ch. 4), 77 operated a work activities center in addition to a regular workshop program and 2 were classified only as work activities centers. Based on our review of the program's records and visits to 13 of the work activities centers, we found that about 50 percent of the centers were involved, to some extent, in producing commodities or providing services for the Federal Government. Also, we found that direct labor hours worked by handicapped workers in the work activities centers were used, along with the direct labor hours for the regular program workshop, for meeting the program's requirement that at least 75 percent of the direct labor hours must be performed by handicapped workers. (See pp. 64 to 66.)

Although Labor's administration of the work activities center concept does not appear to meet the intent of the act, stricter enforcement may achieve the same results at a higher administrative cost. Our analysis of the workers employed under the various exemption certificates appears to substantiate a trend toward including

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1/S. Report No. 1487, 89th Cong., 2d Sess. (1966).

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workers under the broad work activities center category. For example, the percent of total handicapped workers on individual rate and evaluation and training certificates declined from 5.3 to 3.5 and 14.4 to 12.9, respectively, from fiscal year 1968 to 1979. During the same period, the percent of total workshop population included under work activities center certificates increased from 27.1 to 66.9. However, it is probable that all workers in work activities centers, except those already earning in excess of the subminimum wage, would be exempt under either the evaluation or training work programs, or individual rate certificates. Thus, stricter interpretation of the work activities center concept would probably result in additional paperwork and administrative costs with minimal benefit for handicapped workers.

SUBMINIMUM WAGE GUARANTEE SELDOM BENEFITS ELIGIBLE WORKERS

According to the 1966 amendments, all handicapped workers regardless of the type of certificate must be paid, as a minimum, commensurate wages for all hours worked in a sheltered workshop. Commensurate wages refer to wages which are paid to a handicapped worker based on his or her individual productivity in proportion to the prevailing wages and productivity of nonhandicapped workers performing essentially the same work in the same geographic area. The objective of the commensurate wage requirement is to pay the handicapped worker for what he or she produces. For example, the commensurate wage rate for a handicapped worker who is 75 percent as productive, considering quality and quantity, as the average nonhandicapped worker performing essentially similar work in industry at an hourly rate of $4 would be $3--75 percent of the wages paid the nonhandicapped worker.

The Federal subminimum wage requirement is designed to provide a standard of wage protection for handicapped workers whose wage rate, based on the commensurate wage provision, would not equal or exceed 50 percent of the statutory minimum wage (now $1.67 an hour). To be eligible for the Federal subminimum wage protection, a handicapped worker must be covered under a regular program or an individual certificate requiring a rate of at least 50 percent of the statutory minimum wage. During fiscal year 1979, less than 17 percent of the total workshop population was covered under Labor certificates requiring payment of not less than the subminimum wage rate. However, only workers whose productivity falls below the 50-percent level will benefit from the Federal subminimum wage requirement. In these instances, a workshop must subsidize workers so that their wage rate equals at least 50 percent of the statutory minimum wage.

Although the 1966 amendments were intended to provide subminimum wage protection, it appears that Labor's certification process has generally limited the coverage to handicapped persons who were able to consistently earn more than the 50-percent guarantee. Our

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analysis of the average hourly wage rates for 995 handicapped workers employed under regular program certificates in 19 workshops we visited showed that the majority of workers had wage rates substantially above the 50-percent Federal subminimum. The following table shows the breakdown for the workers.

Wage rate as a percent of the minimum wage	Handicapped workers	
	Number	Percent
50 to 74.9	274	27.5
75 and above	721	72.5
Total	995	100.0

For the 995 workers, it is doubtful that the productivity of many of the 721 who were earning at least 75 percent of the minimum wage would often fall below the Federal subminimum level. Similarly, the 274 workers whose average wage rates ranged from 50 to 75 percent would only benefit from the Federal subminimum guarantee for instances when their productivity would fall below 50 percent of the minimum wage. Although several of the workshops visited subsidized a limited number of individuals so that their wage rate exceeded the Federal subminimum rate, we believe that most handicapped workers covered by Labor certificates requiring the Federal subminimum wage guarantee were able to consistently earn more than 50 percent of the statutory minimum wage.

CONCLUSIONS

The primary purpose of section 14(c) of the Fair Labor Standards Act of 1938, as amended, was to encourage the maintenance of a minimum standard of earnings for handicapped workers and to discourage employers from exploiting such workers by paying them low wages. The law's provision that sheltered workshops must pay handicapped workers based on their individual productivity, and the prevailing industry wage provides a reasonable Federal wage standard for assuring that handicapped workers in sheltered workshops are paid fairly. However, the law's provision for paying handicapped workers in sheltered workshops a fixed subminimum wage has not assured a minimum standard of earnings because only those whose wages, based on their individual productivity, would seldom fall below the Federal subminimum are employed under certificates requiring the Federal subminimum wage guarantee. Labor issued exemptions for 83 percent of the workshop population in fiscal year 1979.

When a wage rate, based on the subminimum guarantee, exceeds the level of a worker's productivity, each workshop must assume the financial burden for paying the required subsidies. For cases where the workshop would not be able to pay a subsidy, the workshop must decide whether to apply for one of the exemption certificates

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or to terminate the employment opportunities for the handicapped. Due to the lower functioning level of many handicapped workers in sheltered workshops, the Federal subminimum wage requirement may result in unemployment rather than higher wages for those not exempt. Therefore, strict enforcement of the Federal subminimum guarantee may hurt rather than help handicapped workers.

In view of the staff resources used for reviewing applications and issuing certificates for the various exemption categories and the low number of handicapped workers benefiting from the subminimum wage guarantee, we believe that the Congress should eliminate the Federal policy mandating a guaranteed subminimum wage rate for handicapped workers in sheltered workshops. Eliminating the Federal subminimum wage guarantee would result in few changes from the present sheltered workshop operating practices and procedures as far as financial management and worker compensation systems are concerned. Most handicapped workers in sheltered workshops are paid based on their individual productivity (under the commensurate wage principle). If the Federal subminimum wage guarantee requirement was eliminated, the sheltered workshops would still be required to base the workers' wages on the commensurate wage principle. However, elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The numerous exemption provisions would no longer be needed, and a single certificate could be used for each workshop.

Also, Labor could continue to provide a level of subminimum wage protection for handicapped workers in sheltered workshops even though the statutory requirement for a single Federal subminimum wage was eliminated. For example, Labor could require each workshop to establish a guaranteed wage minimum for each worker based on each worker's average productivity for a specified time period or a workshop could decide to provide a higher guarantee. For example, if a worker's average productivity was 40 percent for the most recent 90-day period, the guaranteed wage would be $1.34 (40 percent of $3.35). This approach would expand the protection available under the present system by extending a wage guarantee to each individual worker in a sheltered workshop. Now, each workshop is required to maintain records documenting the wage rate paid to each worker. Therefore, its paperwork requirements would not be significantly increased.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Fair Labor Standards Act to eliminate the provision that handicapped persons who are employed under special Labor certificates in sheltered workshops must not be paid less than 50 percent of the statutory minimum wage.

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PROPOSED STATUTORY AMENDMENTS

The modifications to the Fair Labor Standards Act, based on our recommendation to the Congress, would read: Section 14(c)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)(1)) is amended to read as follows:

> "The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earnings or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 6 of this act and which are commensurate with those paid nonhandicapped workers in the industry in the vicinity for essentially the same type, quality, and quantity of work and which are related to the worker's productivity."

Both section 14(c)(2) and section 14(c)(3) of the act (29 U.S.C. 214(c)(1)) should be deleted.

AGENCY COMMENTS AND OUR EVALUATION

Neither Labor nor the Committee for Purchase from the Blind and Other Severely Handicapped commented on our recommendation to the Congress that the Fair Labor Standards Act be amended to eliminate the Federal policy for providing a guaranteed subminimum wage of not less than 50 percent of the statutory minimum wage for handicapped workers in sheltered workshops. The National Industries for the Blind and National Industries for the Severely Handicapped agreed with the recommendation.

Labor indicated that it was not in a position to endorse a proposal included in a draft of this report that sheltered workshops establish and document a guaranteed wage minimum based on average productivity for each handicapped worker, without a detailed analysis of its full ramifications. Labor was concerned that such a wage minimum could have an adverse effect on handicapped workers because workshops would place greater emphasis on productivity, at the expense of other services and activities the handicapped workers may need. Labor believed this could be a particular problem in work activities centers, where the emphasis should be on therapeutic activities rather than on productivity. Another concern of Labor was that workshops might be inclined to switch from paying at piece rates to paying at time rates to simplify their recordkeeping burden. Piece rates normally are preferable in vocational rehabilitation, because they contain a built-in incentive which enables the worker to work at his or her own pace, and they permit a more current and accurate measure of productivity than hourly rates.

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Our proposal was designed to continue a guaranteed wage concept established by the 1966 amendments on an individual basis to allow a degree of flexibility in recognition of the divergent functioning levels of handicapped workers in sheltered workshops. Under a guaranteed wage system based on a worker's average productivity for a specific time period, the worker would be paid based on his or her actual productivity if the commensurate wage exceeded the guaranteed rate. However, if the workers' productivity declined so that his or her commensurate wage was less than the guaranteed rate, the worker's wages could not be reduced below the guarantee during that period. However, where a worker's average productivity during a period is lower than the guaranteed wage he or she receives during that period, a proportionately lower guaranteed wage could be established during the next period.

While the act's commensurate wage provision provides a reasonable Federal wage standard for assuring that handicapped workers in sheltered workshops are paid fairly, we continue to believe that a guaranteed wage minimum for each worker should be established by the workshops. We modified our proposal and are recommending that Labor develop procedures for workshops to follow in establishing a guaranteed wage minimum for each handicapped worker. (See p. 28.)

The National Industries for the Blind agreed that sheltered workshops should be required to establish and document a guaranteed wage minimum for each handicapped worker, and it stated that such a requirement would make workshops focus on individual productivity rather than on the complexities of the present certification process. In developing regulations, the National Industries for the Blind suggested that Labor include protective steps that a worker's guaranteed rate should not be allowed to fall below a certain percentage of the rate in effect at the time of the periodic evaluation and that the workshops' records should clearly show how the rate for each individual is determined.

Although the National Industries for the Severely Handicapped agreed with the proposal, it believes that a guaranteed wage based on average productivity may not adequately consider the wide fluctuation in daily productivity of many handicapped workers due to factors, such as the severity of the physical or mental disabilities and symptomatologies, side effects of medication, or recurrence of symptoms formerly in remission. Also, the National Industries for the Severely Handicapped pointed out that the productivity rates of individual workers are affected by daily variances in the complexity, diversity, and quality of the available work. As a result, the National Industries for the Severely Handicapped believes that the use of an average over time to establish a guaranteed rate would negatively impact on a workshop's ability to employ individuals with severe disabilities and variabilities in productivity. The National Industries for the Severely Handicapped concluded that

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Labor must coordinate proposed changes in Federal requirements with the workshop community to insure protection for individual workers and to avoid placing unnecessary administrative burdens on workshops.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary revise the Federal regulations to (1) require that each sheltered workshop establish and document a guaranteed wage minimum for each handicapped worker and (2) establish procedures for workshops to use in documenting each worker's guaranteed wage minimum. Specifically, we recommend that the Secretary adopt procedures which assure that each worker's guaranteed wage is determined on the basis of individual productivity, such as a worker's average productivity for a specified time period.

Mr. MURPHY. Mr. Lapidakis.

STATEMENT OF JOHN LAPIDAKIS, PRESIDENT, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Mr. LAPIDAKIS. Good morning, Mr. Chairman. My name is John Lapidakis. I am the president and chief executive officer of the Lehigh Valley Association for Retarded Citizens in Bethlehem, PA. I am currently the president of the National Association of Rehabilitation Facilities.

I am here this morning to support H.R. 2676 on behalf of NARF, as well as the rehabilitation facility programs administered by my organization. Passage of H.R. 2676 would have a positive impact on the work programs we have at our association and on the handicapped workers.

Our association provides employment and employment-related services through two distinct work-oriented programs, Kurtz Training Center in Bethlehem, PA, and Kurtz Industries, a supportive work program in Allentown. Over 280 mentally handicapped adults are served daily in these two facilities. The severity of the mental retardation of the clients at our Kurtz Training Center ranges from profound to mild. A large percentage of the people served by our programs have been institutionalized.

They were often residents of large State institutions where they received few, if any, employment-related services. We have also kept a lot of severely disabled people out of institutions by providing ongoing and needed supportive services, and by working closely with parents and guardians. At Kurtz Training Center they learn work skills, earn a paycheck, and are provided a meaningful life experience through the work program.

Our program is typical of many thousands of similar programs. The system of certificates that was written into the law for the payment of wages to handicapped workers in 1966 was trying to deal with a much different population and different types of programs than we have today.

I have been with the Lehigh Valley ARC for 18 years, and I have seen these changes. The people we are serving today are much more severely handicapped than those we served 15 to 20 years ago. In fact, many recent studies indicate the growing numbers of more severely handicapped persons that have been coming out of

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institutions as a result of deinstitutionalization—try to say that fast—programs throughout the country.

As I noted before, many of these people have been institutionalized not long ago and were thought to be incapable of any meaningful work activity. We now know that with intensive services in appropriate settings, even the most severely disabled can be helped to engage in productive, meaningful work.

An important factor in accomplishing this goal is to be able to place these severely handicapped persons into jobs where they can have positive job models and have the opportunity to grow. Current wage and hour law regulations interfere with providing these incentives.

Section 14(c) requires that the most severely handicapped be segregated in work activity centers. By regulation, these programs have to be physically separated from other programs.

We also keep a lot of severely disabled out of institutions by providing needed support services and by working closely with the other people in the community. At the Kurtz Training Center we have work activities programs for 150 very severely disabled clients. By law, these people must be physically separated from our regular workshop program, and indeed they are.

While there are some differences in the types of jobs they work on, the primary difference is in the relative levels of productivity. Under current law, we cannot have a work activities client working next to a regular client.

This separation is only because of the Department of Labor rules. The type of work is such that the productivity of one person is not dependent on the productivity of another. Jobs are usually based on a work station model or benchwork model rather than on an assembly line. Where there is a relationship between several workers, great care is taken to make sure that one worker does not slow down others.

Just as profit businesses avoid inefficient models, so must we. Our facility has another goal in addition to efficiency, and that is to optimize the productivity of each individual.

Rehabilitation facilities need a realistic work setting in which to provide services and employment. When the setting is comparable to a regular business, there is a greater likelihood that the handicapped worker can progress to a point where they can live and work with increasing independence. Artificially separating workers by ability can have a negative impact on the rehabilitation process. They do not have the role models who might influence them into being a higher producing person.

The Department of Labor regulations do not allow persons who can earn at greater than $1.68 an hour—one-half of minimum wage—to work in the work activity center. If the worker progresses to that level, he is forced to go to another program. DOL does allow a few individuals to have an individual certificate and still work in the work activities center; but as you will hear from later witnesses, DOL forces you to develop another program if more than 10 percent of the workers in a work activities center exceed the 50-percent level.

If this is not confusing enough, the individual rate is one for competitive employment, not the type normally issued to an indi-

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vidual in a sheltered workshop. Of course, in addition to this, we have a regular workshop certificate, an evaluation certificate, and a training certificate. All of these require separate annual applications with different wage rates or policies attached to each.

We must keep track of which client is covered by which certificate, for which period of time, and ensure that they are paid at least the minimum rate called for in that particular certificate.

None of this administrative burden has anything to do with the rehabilitation process of the workers. Rather than having the wage hour contribute to the rehabilitation process, the rehabilitation process must cater to the wage and hour law.

We have no problem whatsoever with the commensurate wage process, which we heartily support. All workers should be paid according to their individual productivity. This is fair to both the worker and to the facility that employes them. If earnings reflect actual productivity, the worker or trainee will have a much more realistic picture of their readiness to work independently.

This is not to say that the earnings of many handicapped workers is adequate. The productive capacity of many is severely limited. We're talking about a severely handicapped population, for the most part. There are programs such as supplemental security [SSI], Social Security disability insurance [SSDI] and other social service programs that should supplement income that is not adequate to provide a reasonable standard of living. It should not be a function of the Fair Labor Standards Act to provide that subsidy.

H.R. 2676 would have a positive impact on our programs. First, it would increase the ability of clients to move up through the program without artificial barriers. Clients would not have to change jobs as they move up in productivity. Now clients may have a job change or may actually change buildings in order to stay under appropriate certificate. These unnecessary restrictions would be eliminated.

H.R. 2676 would also provide a more accurate indication of actual productivity, since there would be no artificial subsidies mandated by the Department of Labor. That, again, is not to say that subsidies are inappropriate, but they should not be mandated by DOL. There would also be some easing of the administrative burden caused by the paperwork and the multiplicity of certificates.

The report to accompany H.R. 2676, as pointed out earlier, should make it clear that rehabilitation facilities are not trying to shy away from our moral and legal duty to pay handicapped workers fair wages. In fact, we hope that by lessening the unnecessary administrative requirements, both rehabilitation facilities and the Department of Labor will put more emphasis on a system to better measure individual productivity and in efforts to find ways to increase productivity of severely handicapped individuals.

We would rather see the Department of Labor visit our programs more frequently and help us in positive ways than the current infrequent visits that tend to dwell on irrelevant details, and are all too often adversarial in nature.

As president of NARF, I am keenly aware of the importance of this issue to rehabilitation facilities across the country. It is something our association has been addressing for several years. Your

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willingness to hold this hearing today is a very positive step. We appreciate your interest in this issue.

Thank you.

[The prepared statement of Mr. John Lapidakis follows:]

PREPARED STATEMENT OF JOHN LAPIDAKIS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LEHIGH VALLEY ASSOCIATION FOR RETARDED CITIZENS

Good morning, Mr. Chairman. My name is, John Lapidakis. I am President and Chief Executive Officer of Lehigh Valley Association for Retarded Citizens in Bethlehem, Pennsylvania. I am also currently the President of The National Association of Rehabilitation Facilities.

I am here this morning in support of H.R. 2676 on behalf of N.A.R.F as well as the rehabilitation facility programs administered by The Lehigh Valley ARC. Passage of H.R. 2676 would have a positive impact on the work programs we have at Lehigh ARC and on the handicapped workers.

LARC provides employment and employment related services through two distriact work oriented programs, Kurtz Training Center in Bethlehem and Kurtz Industries in Allentown. Over 280 mentally handicapped adults are served daily in the two facilities. The severity of the mental retardation of the clients at Kurtz Training Center ranges from profound to mild. A large percentage of the people served by our programs have been institutionalized. They were often residents of large state institutions where they received few, if any, employment related services. We also kept a lot of severely disabled out of institutions by providing needed supportive services and by working closely by with parents and guardians. At Kurtz Training Center they learn work skills, earn a paycheck and are provided a meaningful life experience through the work program.

The system of certificates that was written into law for payment of wages to handicapped workers in 1966 was trying to deal with a much different population and different types of programs with a much different population and different types of programs than we have today. I have been with the Lehigh Valley ARC for eighteen years and I have seen these changes. The people we are serving today are much more severely handicapped than those we served 15 to 20 years ago. At a recent symposium in Hot Springs, Arkansas, Dr. Frederick Menz, a professor of rehabilitation administration at the University of Wisconsin noted, "The impact of deinstitutionalization . . . (is) becoming noticeably felt as more cognitively, behaviorally and physically limited persons are referred (to rehabilitation facilities); both in gross numbers and severity." Mens also noted that there have been a general decline in the productivity of the work force of rehabilitation facilities. As I noted before, many of them have been institutionalized and not long ago, were thought to be incapable of any meaningful work activity. We know now, that with incentive services in appropriate settings, even the most severely disabled can be helped to engage in productive meaningful work.

An important factor in accomplishing this goal is to be able to place these severely handicapped persons into jobs where they can have positive job models and have the opportunity to grow. Current wage-hour law and regulations interfere with providing those incentives. Section 14(c) requires that the more severely handicapped be segregated in work activities centers. By regulation these programs have to be physically separated from other programs. We also keep a lot of severely disabled out of institutions by providing needed supportive services and by working closely with parents and guardians. At Kurtz Training Center we have a work activities center for 150 very severely disabled clients. By law they must be physically separate from our regular workshop program. While there are some differences in the types of jobs they work or, the primary difference is in the relative levels of productivity. Under current law we cannot have a work activities client working next to a regular client.

This separation is only because of Department of Labor rules. The type of work is such that the productivity of one person is not dependent on the productivity of another. Jobs are usually based on a work station model or benchwork model rather than an assembly line. Where there is a relationship between several workers, great care is taken to make sure that one worker does not slow down others. Just as for profit businesses avoid inefficient methods, so must we. Our facility has another goal in addition to efficiency and that is to optimize the productivity of each individual.

Rehabilitation facilities need a realistic work setting in which to provide services and employment. When the setting is comparable to a regular business, there is a

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greater likelihood that the handicapped worker can progress to a point where they can live and work with increasing independence. Artificially separating workers by ability can have a negative impact on the rehabilitation process. They do not have role models who are higher producing.

The Department of Labor regulations do not allow persons who can earn at greater then $1.68 an hour (50 percent of the minimum wage) to work in the work activities center. If the worker progresses to that level, they are forced to go to another program. DOL does allow a few individuals to have an individual certificate and still work in the work activities center. But as you will hear from a later witness, DOL forces you to develop another program if more than 10% of the workers in a work activities center exceed the 50 percent level. If this is not confusing enough, the individual rate is one for competitive employment, not the type normally issued to an individual in a sheltered workshop. Of course, in addition to this we can have a regular workshop certificate, an evaluation certificate, and a training certificate. All of these require separate annual application with different wage rates or policies attached to each. We must keep track of which client is covered by which certificate for what period of time and insure that they are paid at least the minimum rate called for in that particular certificate. None of this administrative burden has anything to do with the rehabilitation of the workers. Rather than having the wage hour contribute to the rehabilitation process, the rehabilitation process must cater to the wage hour law.

We have no problem, whatsoever, with the commensurate wage process. All workers should be paid according to their individual productivity. This is fair to both the worker and to the facility that employes them. If earnings reflect actual productivity, the worker or trainee will have a much more realistic picture of their readiness to work independently. This is not to say that the earnings of many handicapped workers is adequate. The productive capacity of many is severely limited. There are programs such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI) and other social service programs that should supplement income that is not adequate to provide a reasonable standard of living. It should not be a function of the Fair Labor Standards At to provide that subsidy.

H.R. 2676 would have a positive impact at Kurtz Training Center. First, it would increase the ability of clients to move up through the program without artificial barriers. Clients would not have to change jobs as they move up in productivity. Now clients may hve to change jobs or buildings in order to stay under the appropriate certificate. These unnecessary restrictions would be eliminated. H.R. 2676 would also provide a more accurate indication of actual productivity since there would be no artificial subsidies mandated by the Department of Labor. That again is not to say that subsidies are inappropriate, but they should not be mandated by DOL. There would also be some easing of the Administrative buren caused by the paperwork and the multiplicity of certificates.

The report to accompany H.R. 2676 should make it clear that rehabilitation facilities are not trying to shy away from our moral and legal duty to pay handicapped workers fair wages. In fact, we hope that by lessening the unnecessary administrative requirements both rehabilitation facilities and the Department of Labor will put more emphasis on a system to better measure individual productivity and in efforts to find ways to increase productivity of severely handicapped individuals. We would rather see the Department of Labor visit our programs more frequently and help us in positive ways than the current visits that tend to dwell on irrelevant details.

As president of NARF I am keenly aware of the importance of this issue to rehabilitation facilities across the country. It is something our association has been addressing for several years. Your willingness to hold this hearing today is a very positive step. We appreciate your interest in this issue. Thank you.

Mr. MURPHY. Now Mr. Cooney.

STATEMENT OF DAVID COONEY, PRESIDENT, GOODWILL INDUSTRIES OF AMERICA

Mr. COONEY. Good morning, sir. I'm David Cooney, president and chief executive officer of Goodwill Industries of America.

Goodwill Industries of America is the largest private sector employer of disabled people in the world. We operate 174 sheltered workshops in the United States and Canada and 44 rehabilitation facilities in 31 countries outside the United States. So I believe we

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have some expertise in the area which is being addressed this morning.

In the interest and the spirit of the times, I will simply refer to the prepared testimony which I have given to you, support strongly the remarks made by my colleagues who preceded me, and express the wish that I had said what Congressman Petri had said, because that was really my intention here this morning.

I think, rather than going to the quality of the previous testimony, which is high, and which addresses the issues which concern me the most in my present occupation, I would rather address the intensity with which those recommendations are made.

This is a serious problem. It's costing individuals who are severely and multiple handicapped an opportunity for upward economic mobility and introduction into the broad social stream of America.

We have an opportunity here with a minor revision in the statute to address problems which are severe for the management, severe for the people impacted by the management, and which can be made with very little change in the law and very little change in the administration of that law.

I would just take you for a moment inside a sheltered workshop where you will find artificial subdivisions, say, maybe a yellow line on the floor. It might be a curtain. It might be a pipe, anything; and on one side are people who are in work activities centers. On the other side are people who are not.

They are managed by different teams. They are accounted for by different people. They operate on different certificates, and that artificial separation, be it a yellow line on the floor or whatever, says the people on one side will go this far and no farther, you can't go work outside the plant. You can't work beside somebody who is more skilled than you are and, therefore, whom you can copy as a role model. That's a sad situation in today's times. We have an opportunity with this legislation to change it.

We have an opportunity to give our people a chance not to be separated physically, no longer to be separated so arbitrarily economically, and an opportunity for greater opportunities, greater changes for integration in employment not only within the facility but within the types of worksites outside the facility that others have already referred to this morning.

I recognize, as we make this suggestion to you, that it also places a very heavy burden not only upon the Department of Labor and its enforcement procedures but the operations of the sheltered workshop facilities to make sure that adequate records are kept, that there is a process by which the work of these individuals can be fairly and adequately measured so that the amount of money which they have earned will be available to them.

Goodwill has recognized for sometime, and as late as 1981 published a performance measurement system which has worked very effectively for us. We have made this available to other people operating sheltered workshop facilities. If this legislation passes, we pledge to work with the Department of Labor to see that this type of measurement and enforcement can be brought about quickly and fairly and inexpensively in the best interests of all.

We very strongly urge that you take the action proposed. It's important to a lot of people who need your help.

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Thank you, sir.

[The prepared statement of David M. Cooney follows:]

PREPARED STATEMENT OF DAVID M. COONEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GOODWILL INDUSTRIES OF AMERICA, INC.

Mr. Chairman and Members of the Subcommittee: I am David M. Cooney, President and Chief Executive Officer of Goodwill Industries of America, Inc. (GIA). We appreciate this opportunity to present the views of Goodwill Industries to the Subcommittee on legislation (H.R. 2676) to amend Section 14(c) of the Fair Labor Standards Act.

For your information, GIA is a national nonprofit corporation serving individuals with disabilities through 174 member rehabilitation facilities in North America and 44 affiliates in 31 countries around the world. These community-based organizations provide a wide variety of services to people with handicaps, including job training, vocational evaluation, transitional and full-time employment, independent living skills, career counseling, and private sector placement services.

We are the largest network of privately operated vocational rehabilitation facilities in the world. More than 71% of our revenues last year were derived from retail sales and industrial contracts for goods and services. These revenues, along with fees earned by providing services for government rehabilitation agencies, private corporations and insurance companies and from very limited public cash contributions, are used to provide vocational rehabilitation programs and employment for individuals with disabilities. In 1983, Goodwill Industries placed 7,500 people with disabilities into competitive, private sector employment through our placement programs, and employed over 28,000 workers with disabilities in our retail outlets, production facilities, and contract programs.

We would like to commend the Chairman and the Ranking Minority Member of the Subcommittee for calling this hearing because we believe that an examination by Congress of the impact on individuals with disabilities of the Fair Labor Standards Act, as amended, is long overdue.

The 1966 amendments to the Act substantially revised provisions for paying individuals with disabilities at special minimum wages. These amendments were designed to encourage the maintenance of a minimum standard of compensation for workers with disabilities and to assure that these workers—probably the most vulnerable segment of our population—were not exploited through low wages. Under the 1966 amendments, the concept of "commensurate wages" was introduced under which workers with disabilities employed in sheltered workshops must be paid commensurate wages based on their individual productivity when compared to wages being paid nonhandicapped workers performing similar tasks in their geographic area. The amendments also established a subminimum wage standard (50% of the statutory minimum) for workers with disabilities in sheltered workshops covered by the regular workshop certificate. Additionally, for those individuals whose disabilities are so severe that they cannot produce even at the 50% level, Congress provided authority for individual certificates to be issued by the Secretary of Labor to allow these individuals to be paid at wage rates lower than the federal subminimum standard, but not less than 25%. However, under current law, there is no established minimum wage rates for those individuals employed under the training, evaluation, or WAC certificates.

In 1981, the General Accounting Office (GAO) completed a two-year study which, in part, investigated the impact of Section 14(c) of the FLSA on sheltered workshops and on the people with disabilities they employ. The GAO report concluded: "Eliminating the Federal subminimum wage guarantee would result in few changes from the present sheltered workshop operating practices and procedures as far as financial management and worker compensation systems are concerned. Most handicapped workers in sheltered workshops are paid based on their individual productivity (under the commensurate wage principle). If the Federal subminimum wage guarantee requirement was eliminated, the sheltered workshops would still be required to base the workers' wages on the commensurate wage principle. However, elimination of the subminimum wage requirement would permit Labor to simplify the process for certifying the eligibility of sheltered workshops to pay handicapped workers less than the minimum wage. The numerous exemption provisions would no longer be needed, and a single certificate could be used for each workshop."

The report also concluded that necessary wage protections for employees with disabilities in sheltered workshops could be accomplished by requiring workshops to establish a guaranteed wage minimum for each worker based on the worker's average productivity over a specified time period.

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The legislation under consideration by this Subcommittee would implement these recommendations, and Goodwill Industries urges you to act favorably on H.R. 2676 at the earliest opportunity.

The Subcommittee has received testimony from, among others, Representative Petri and the National Association of Rehabilitation Facilities (NARF) detailing the administrative burdens sheltered workshops face in complying with these complex provisions of the FLSA. This administrative overhead detracts from the workshop's ability to fulfill its mission: Providing employment and other services to individuals with disabilities. They have also discussed the difficulties confronting the Department of Labor, which focuses its limited resources on technical compliance issues—such as certificate renewals—rather than on substantive reviews to determine which sheltered workshop employees are being paid proper amounts. These problems alone justify Congressional enactment of H.R. 2676.

However, there are additional, and perhaps more compelling, reasons for enacting this measure: The people with disabilities who are employed in sheltered workshops.

Since Congress last amended the Fair Labor Standards Act as it applies to sheltered workshops, there has been a dramatic shift in the population served. In the 1960s, the majority of individuals employed in sheltered settings were those with physical disabilities. Sheltered workshop clients with mental disabilities were a distinct minority. Today the situation is reversed as a result of a variety of factors, such as deinstitutionalization of people with mental disabilities, greater acceptence by society of individuals with physical disabilities, and advances in medical rehabilitation which allows them greater access to jobs in competitive labor markets. Many of the people now served by and employed in sheltered workshops require years of counseling, adjustment, and training before they can hope to succeed in competitive employment. There are also many workers who, because of the severity of their disabilities and inconsequential productive capacity, will be long-term employees in sheltered work environments.

The ridged system imposed on sheltered workshops as a result of the current construction of Section 14(c) of the FLSA ultimately works to the disadvantage of the workshop clients. Those workshop employees with the severest disabilities who are unable to engage in productive work are placed in Work Activity Center (WAC) programs. Under the Department of Labor's implementation of Section 14(c), these clients must be physically segregated from other workshop employess. It is estimated that 71% of all workshop clients are employed in WACs. The concensus among vocational rehabilitation counselors is that this segregation limits the rehabilitation potential of these WAC clients and reduces their productivity and wages. These individuals should be allowed to work alongside of their less disabled co-workers. A strong case could also be made that this separation of WAC clients violates the intent of Section 504 of the Rehabilitation Act.

There is increasing emphasis within the vocational rehabilitation field and in the Department of Education on the "supported" work model, where individuals with disabilities are employed in a variety of integrated settings, such as regular work sites. Many local Goodwills actively seek contracts under the Javits-Wagner-O'Day Act to perform services for government agenices. Other Goodwills engage in similar contracts with for profit businesses. The benefits to individuals with disabilitiies—such as the ability to interact with nondisabled workers—are substantial. Under current law, however, sheltered workshops are prohibited from integrating their most severely disabled employees (WAC clients) in these supported work environments. Under H.S. 3276, this bias against those workers with the severest disabilities would be eliminated.

Finally, we would like to make one additional recommendation to the Subcommittee. The Department of Labor is required to ensure that wages paid to workers in sheltered workshops are based on their individual productivity. This is an enormous task, given the 4,800 sheltered workshops nationwide operating an estimated 8,200 different workshop programs. This enforcement requirement becomes especially critical if there is no minimum wage standards. It insures that the Labor Department can accurately measure that workers are paid according to their individual productivity, objective performance standards to measure productivity of workshop employees need to be implemented. Goodwill Industries recognize the need for such a system which could be utilized with minimum difficulty by all types and sizes of rehabilitation facilities. This concern led in 1981 to publication of Goodwill's Performance Measurement System. We strongly urge that the subcommittee include report language to accompany H.R. 2676 requiring the Department of Labor to implement objective standards for productivity measurement of all sheltered workshops. We would be pleased to work with Labor officials to adapt Goodwill's system for application to all workshops.

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Again, Goodwill Industries of America strongly supports Congressional enactment of this measure and this opportunity to present our views is appreciated. We would be pleased to respond to any questions you may have.

Mr. MURPHY. Mr. Hartnett.

STATEMENT OF JOSEPH HARTNETT, DIRECTOR, SHELTERED EMPLOYMENT SERVICES, INC., PHILADELPHIA, PA

Mr. HARTNETT. Good morning, Mr. Murphy and Mr. Petri. My name is Joe Hartnett, and I'm testifying on behalf of the Pennsylvania Association of Rehabilitation Facilities. PARF represents vocational, residential, and medical rehabilitation providers in the Commonwealth of Pennsylvania.

I'm also testifying on behalf of my own facility, Sheltered Employment Services, in Philadelphia. I hope to provide you during this presentation a brief overview of the reasons why Pennsylvania facilities working with multiple handicapped individuals in work settings support revisions to the Fair Labor Standards Act.

I'd like to point out that the agency that I represent predates the Fair Labor Standards Act. We were incorporated in 1896 as an agency. We now serve over 150 disabled individuals.

The Commonwealth of Pennsylvania currently has 157 licensed vocational facilities. All of these facilities are certified by the Department of Labor to pay substandard wages to disabled clients who are unable to produce at minimum wage levels. The majority of Pennsylvania's licensed vocational facilities are work activities centers with a small number of clients participating at the sheltered employment level, essentially reflecting the national situation. A small number of facilities such as SES are predominantly serving clients who can produce at above 50 percent minimum wage.

I have been a director of both such facilities.

There are several reasons why the majority of Pennsylvania's work oriented rehabilitation facilities are certified as work activity centers. The primary reason, however, has to do with the population being served. Since the early 1970's there has been a significant change in the number of persons with disabilities being served. Whereas, in earlier years the predominant populations were the physically handicapped and mentally retarded.

Pennsylvania's work activity—work oriented facilities are now serving the severely disabled. In my own agency, some 10 years ago 75 percent of those people served were physically disabled. Today that number has dropped to 15 percent, the difference made up by mentally ill or mentally retarded individuals all requiring longer rehabilitation periods to reach the 50-percent productivity level.

The deinstitutionalization of State centers, centers for the mentally retarded and State hospitals for the mentally ill, have resulted in a large population of severely retarded and chronically mentally ill persons living in the community and working in facilities such as ours. Such individuals require more extensive training and more individualized supervision and treatment planning in order to succeed in a vocational program.

Additionally, they tend to be less able to produce at a level equal to or greater than the 50 percent of the minimum wage. The chronically mentally ill, for example, tend to experience great and fre-

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quent fluctuations in their productivity. The quality and quantity of work produced in a day varies with their emotional condition. Individuals suffering from head injury also show significant fluctuations in their productivity as a result of varying levels of physical and emotional stamina.

SES has pioneered in the area of serving head injured and brain trauma individuals, and this is an area which we have had to come back for numerous special certificates in order to give head injured individuals the time necessary to reach the 50-percent productivity level and be successful in our workshop.

The change in population of individuals currently being served in rehabilitation facilities in Pennsylvania is a significant factor to consider when reviewing the special minimum wage provisions of the Fair Labor Standards Act. The guarantee of 50 percent of the minimum wage for handicapped workers, when established in 1966, was relevant and appropriate for the population being served.

In light of the population of today, which is much more severely disabled and complex, the majority of individuals are unable to be consistently productive to meet the 50-percent guarantee, and are paid wages based on productivity. Quite simply, the disabled individuals being served in Pennsylvania's vocational rehabilitation facilities are now more severely disabled and much less able to work at 50 percent of minimum wage. This necessitates special exemption certificates, and again we are constantly putting people into what was the minority category, and they've now become the majority category.

Another significant change in the vocational rehabilitation system since the early seventies is the current emphasis on strengthening ties between the private sector and rehabilitation training programs, in order to fully integrate disabled individuals into the competitive work force. Section 14(c) of the Fair Labor Standards Act frustrates such attempts to integrate severely disabled individuals with higher producing persons, both within rehabilitation facilities and within private industry settings.

An example of this includes the current prohibition to mix work activity and sheltered employment clients within rehabilitation facilities. Another example concerns work stations in industry. Work related facilities interested in establishing such industry integrated programs for the severely disabled are frustrated by the restrictions often imposed upon them in designing such a program as a result of the subminimum wage provisions of the Fair Labor Standards Act.

The Pennsylvania Association of Rehabilitation Facilities would like to see the law be flexible enough to encourage the development of such programs, which have proven to be successful in assisting disabled individuals to become vocationally independent.

Based on the documented need to simplify the Fair Labor Standards Act, the need to keep the provisions in line with the current populations being served by facilities, and the need of the act to support industry integrated training models for handicapped workers, the Pennsylvania Association of Rehabilitation Facilities recommends that the Fair Labor Standards Act be changed. We specifically recommend that the language recommended by the Gener-

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al Accounting Office study which was conducted in 1979 through 1981 be adopted.

Thank you for the opportunity to present the testimony.

Mr. MURPHY. Thank you very much.

[The prepared statement of Joseph Hartnett follows:]

PREPARED STATEMENT OF JOSEPH HARTNETT, EXECUTIVE DIRECTOR, SHELTERED EMPLOYMENT SEVICES, INC., PHILADELPHIA, PA, ON BEHALF OF THE PENNSYLVANIA ASSOCIATION OF REHABILITATION FACILITIES

Good morning Congressman Murphy and the honorable members of the Labor Standards Subcommittee. My name is Joseph Hartnett and I am testifying on behalf of the Pennsylvania Association for Rehabilitation Facilities. PARF represents vocational, residential and medical rehabilitation providers in the Commonwealth of Pennsylvania. I am also testifying on behalf of the vocational rehabilitation facility I direct in Philadelphia, Pennsylvania. The facility's name is Sheltered Employment Services, Inc. (SES). I hope to provide you during this presentation with a brief overview of the reasons why Pennsylvania facilities working with multiply handicapped individuals in work settings support revisions to the Fair Labor Standards Act.

The Commonwealth of Pennsylvania currently has 157 licensed vocational facilities. All of these facilities are certified by the Department of Labor to pay subminimum wages to disabled clients who are unable to produce at minimum wage levels. The majority of Pennsylvania's licensed vocational facilities are work activity centers with a small number of clients participating at the sheltered employment level. A small number of facilities such as SES are predominately serving clients who can produce at above 50% of the minimum wage.

There are several reasons why the majority of Pennsylvania's work-oriented rehabilitation facilities are certified as work activity centers. The primary reason however has to do with the population being served. Since the early 1970's there has been a significant change in the nature of persons with disabilities being served. Whereas in earlier years the predominate populations were the physically handicapped and the mildly mentally retarded, work-oriented facilities are now serving the severely disabled. Deinstitutionalization of state centers for the mentally retarded and state hospitals for the mentally ill has resulted in a large population of severely retarded and chronically mentally ill persons living in the community and working in vocational rehabilitation facilities. Such individuals require more extensive training and more individualized supervision and treatment planning in order to succeed in a vocational program. Additionally they tend to be less able to produce at a level equal to or greater than the 50 percent of minimum wage. The chronically mentally ill for example tend to experience great fluctuations in their productivity. The quality and quantity of work produced in a day varies with their emotional condition. Individuals who are suffering from head injury also show significant fluctuations in their productivity as a result of varying levels of physical and emotional stamina.

The change in the population of individuals currently being served in work-oriented rehabilitation facilities is a significant factor to consider when reviewing the special minimum wage provision of the Fair Labor Standards Act. The guarantee of 50 percent of the minimum wage for handicapped workers when established in 1966 was relevant and appropriate for the population being served. In light of the population of today which is much more severely disabled and complex, the majority of individuals are unable to be consistently productive to meet the 50 percent guarantee and are paid wages based on their actual productivity. Quite simply the disabled individuals being served in Pennsylvania's vocational rehabilitation facilities are more severely disabled and much less able to work at 50 percent of minimum wage or above.

Another significant change in the vocational rehabilitation system since the early 1970's is the current emphasis on strengthening ties between the private sector and rehabilitation training programs in an effort to fully integrate disabled individuals into the competitive work force. Section 14(c) of the Fair Labor Standards Act frustrates such attempts to integrate severely disabled individuals with higher producing persons both within rehabilitation facilities and within private industry settings. An example of this includes the current prohibition to mix work activity and sheltered employment clients within rehabilitation facilities. Another example concerns "Work Stations in Industry." Work-oriented facilities interested in establishing such industry integrated programs for the severely disabled are frustrated by the restrictions often placed upon them in designing such a program as a result of the subminimum wage provisions of the Fair Labor Standards Act. Our Association would like

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to see the law be flexible enough to encourage the development of such programs which have proven to be successful in assisting disabled individuals become vocationally independent.

Based on the documented need to simplify the Fair Labor Standards Act, the need to keep the provisions in line with the current populations being served by facilities and the need for the Act to support industry integrated training models for handicapped workers, the Pennsylvania Association of Rehabilitation Facilities recommends that the Fair Labor Standards Act be changed. We specifically recommend that the language recommended by the General Accounting Office study which was conducted from 1979-1981 be adopted.

Thank you for the opportunity to present our comments and recommendations in this regard.

Mr. MURPHY. Mr. Johansen.

STATEMENT OF EIVIND H. JOHANSEN, PRESIDENT, NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED

Mr. JOHANSEN. Mr. Chairman, I am Eivind Johansen, executive vice president of the National Industries for the Severely Handicapped; and I appreciate your invitation to allow us to testify here today to represent our organization, which is generally known by the acronym NISH.

My statement includes our organization's background, mission, and functions; and to conserve time, I will not go into those areas, but will proceed directly to an oral summation of our position on H.R. 2676.

NISH endorses H.R. 2676. It's our view that the current certificate requirements are unnecessarily complicated and may actually act as disincentives to the employment and upward mobility of persons who have severe disabilities.

Today, as you've heard, regulations require a workshop to obtain as many as five different certificates in order to train, evaluate, and employ individuals with disabilities whose levels of productivity vary. The necessity to operate with several certificates, each with different requirements, sometimes causes workshop management to be more concerned with keeping records of hours worked, wages paid, and certificate limits than with providing training and employment opportunities in the most appropriate and least restrictive environments.

We believe the bill would significantly reduce the paperwork workshop personnel are currently burdened with by allowing one certificate to cover all levels of workers with disabilities. This would eliminate the need to record the hours worked, the wages paid and the names of the individual workers by each type of certificate, although those types of records would be maintained, and carefully maintained, for the particular certificate.

We feel H.R. 2676 would also help the Department of Labor to reduce paperwork. Currently, DOL section 14(c) regional office personnel appear to spend a significant amount of time issuing and recording the various workshop certificates. It could free those personnel from processing forms and allow them more time to train workshop personnel and conduct on-site audits.

Thus, the emphasis could be shifted from compliance with the certificate process to compliance with the payment of wages commensurate with workers' ability to produce.

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Another problem with the current 14(c) provisions that has also been mentioned here that H.R. 2676 would solve is the segregation of people into working groups determined by productivity level. The current law's emphasis on containment of persons with severe disabilities in a work activity center is not consistent with today's thinking in our rehabilitation community.

It prevents those persons from working alongside more able workers, thereby learning the skills and gaining the experience which would enable them to perform more difficult, higher paying tasks. More and more these days, we're finding that mainstreaming persons with disabilities in work situations as well as in educational settings provides more normal job experiences that result in higher productivity and more well rounded personal development.

The current 14(c) provisions make it difficult for workshops to expose employees with very severe disabilities to other employees whose development is further along. Consequently, some don't make the effort. The losers in such situations are the persons with the most severe disabilities, the same people 14(c) was initially written to help.

H.R. 2676 would allow this segregation to end at the option of the workshop.

In conclusion, I want to thank you for the opportunity to present this statement today, and we at NISH hope that you will decide to streamline the certification process as much as possible. Workshop managers need the flexibility to adapt their work requirements to meet the needs of their employees. Simplifying 14(c) paperwork and permitting the integration of less productive with more productive workers would help them do a better job in assisting people with severe disabilities obtain meaningful, dignified, and better paying jobs.

Thank you very much.

Mr. MURPHY. Thank you very much.

[The prepared statement of Eivind Johansen follows:]

PREPARED STATEMENT OF EIVIND H. JOHANSEN, EXECUTIVE VICE PRESIDENT, NATIONAL INDUSTRIES FOR THE SEVERELY HANDICAPPED, INC.

Mr. Chairman, I am Eivind H. Johansen, Executive Vice President of National Industries for the Severely Handicapped, Inc. I appreciate your invitation to be here today to represent our organization, generally known by its acronym, NISH.

NISH is a nonprofit agency that provides technical assistance to sheltered workshops interested in securing Federal contracts under the mandatory procurement provisions of Public Law 92-28, the Javits-Wagner-O'Day Act (JWOD). Our primary objective is to provide jobs for people with severe disabilities. At the suggestion of Congress, NISH was organized in 1974. Its establishment was supported by a coalition of national agencies long connected with serving persons with severe disabilities. They are: Association of Retarded Citizens of the United States, Goodwill Industries of America, National Association of Jewish Vocational Services, National Association of Rehabilitation Facilities, National Easter Seal Society, and United Cerebral Palsy Association. Although NISH is an independent corporation, representatives of these agencies serve on the NISH Board of Directors and are vitally involved with the JWOD program.

Since its inception, NISH has succeeded in creating over 12,000 new jobs for individuals with severe disabilities and in securing for the 240 producing workshops, approximately $100 million in prime contracts with the Federal government.

NISH provides assistance to workshops in the areas of: research and development, engineering, production planning, quality control, inventory management, cost analysis, pricing, contract administration, and regulatory processing. NISH also helps workshop personnel better understand Federal contracting procedures and regula-

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tions established by the President's Committee for Purchase from the Blind and Other Severely Handicapped.

Though workshop compliance with the Fair Labor Standards Act and other labor law regulations historically had not been emphasized by NISH, a 1981 GAO Report and a Congressional Report drafted after 1983 oversight hearings on the Javits-Wagner-O'Day Act by the House Subcommittee on Manpower and Housing both suggested that NISH take a stronger role in advising workshops on these compliance issues. Consequently, in July of 1984, NISH established a Compliance Assistance Department with two professional staff members to assit workshops to better understand and comply with Federal regulations. During the past year, NISH Compliance personnel visited over 100 workshops. This exposure to workshop operations and Department of Labor (DOL) regulations has provided insight into the issues addressed by the Petri bill.

NISH endorses H.R. 2676. It is NISH's view that the current DOL certification requirements are unnecessarily complicated and may actually act as disincentives to the employment and upward mobility of people who have severe disabilities.

Today, DOL regulations require a workshop to obtain as many as five different certificates in order to train, evaluate, and/or employ individuals with disabilities whose levels of productivity vary. The necessity to operate with several certificates, each with different requirements, sometimes causes workshop management to be more concerned with keeping records of hours worked, wages paid, productivity rates, and certificate limits than with providing training and employment opportunities in the most appropriate and least restrictive environments.

It is clear that the current DOL certification requirements have created problems which need to be addressed. The Petri bill would go a long way toward rectifying these problems. We believe that the bill would reduce the paperwork workshop personnel are currently burdened with by allowing one certificate to cover all levels of workers with disabilities. This will eliminate the need to record the hours worked, the wages paid, and the names of the individual workers by each type of certificate.

We feel the Petri bill would also help DOL reduce paperwork. Currently, DOL's Section 14(c) Regional Office personnel appear to spend a significant amount of time issuing and monitoring the various workshop certificates. the GAO study recognized this and commented:

"In addition to the increases in the number of certificates issued annually, the paperwork burden has also increased due to the different applications which must be filed with Labor regional offices and State vocational rehabilitation agencies, especially for the increased number of special exemptions requested for evaluation and training programs and individual rates. Labor, through its regional offices, processes the applications submitted by sheltered workshops for the five types of special certificates. Generally, one or more individuals are responsible for reviewing applications and issuing certificates in each regional office. According to the responsible Labor officials in four of the five regions we visited, the time spent for the certification process ranged from abut 0.5 to 1.5 staff years, depending on the number of workshops in each region. For these regions, the number of certified workshops ranged from 292 to 677 as of the end of fiscal year 1979."

The elimination of the multi-certificate system would, in our opinion, allow DOL Section 14(c) personnel to better enforce the applicable regulations through development of meaningful procedures and standards. It would free DOL personnel from processing forms and also allow them more time to train workshop personel and more time to conduct on-site audits. Thus, the emphasis could be dramatically shifted from compliance with the certificate process to compliance with payment of wages commensurate with workers' abilities to produce—not a wage based on their disabilities.

Another problem with the current 14(c) regulations that H.R. 2676 would solve is the segregation of people into working groups determined by productivity levels. The current law's emphasis on containment of persons with severe disabilities in a Work Activity Center is not consistent with today's thinking in the rehabilitation community. It prevents those persons from working alongside more able workers, thereby learning the skills and gaining the experience which would enable them to perform more difficult, higher paying tasks. More and more these days we are finding that mainstreaming persons with disabilities in work situations as well as in educational settings provides more "normal" job experience that result in higher productivity and more well-rounded personal development. The current 14(c) regulations make it difficult for workshops to expose employees with very severe disabilities to other employees whose development is further along, and consequently, some don't make the effort. The losers in such situations are the persons with the

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most severe disabilities—the same people 14(c) was written to help. The Petri bill would allow this segregation to end at the option of the workshop.

In conclusion, I want to thank you for the opportunity to present this statement to you today. We at NISH hope you will decide to streamline the Department of Labor's certification procedures as much as possible. Workshop managers need the flexibility to adapt their work requirements to meet the needs of their employees. Simplifying 14(c) paper work requirements and permitting the integration of less productive with more productive workers would help them do a better job in assisting people with severe disabilities obtain meaningful, dignified and better paying jobs.

Mr. MURPHY. Mr. Records.

STATEMENT OF TONY RECORDS, EXECUTIVE DIRECTOR, PRATT MONITORING PROGRAM FOR THE DISTRICT OF COLUMBIA ASSOCIATION FOR RETARDED CITIZENS—U.S.

Mr. RECORDS. Good morning, Mr. Chairman. My name is Tony Records, and I'm the director of the Pratt Monitoring Program for the District of Columbia Association for Retarded Citizens. As the last one on this panel this morning, I will be mercifully brief.

I appear before you today representing the Association for Retarded Citizens of the United States, the largest organization in our country advocating on behalf of citizens who are mentally retarded. Over one-half of our approximately 160,000 members are parents of individuals who are retarded, and many of our 1,300 local associations provide sheltered employment services.

The Association for Retarded Citizens in the United States first wishes to stress that this legislation under consideration today is one which will primarily affect persons with mental retardation. According to the latest Department of Labor statistics on sheltered employment based on data available on June 30, 1985, there are approximately 230,000 handicapped clients involved in sheltered employment. The vast majority of these people, 170,000, were working in work activity centers, and of this number more than 90 percent are mentally retarded.

A smaller percentage of people with retardation are also involved in regular sheltered work and training and evaluation programs, as well as some who work under individual certificates. Of the over 5,000 DOL certified workshops, 4,145 are work activity centers, of which approximately 1,500 are dual programs on the same site housing both work activities and regular workshop programs.

Since the vast majority of sheltered workshop clients are mentally retarded, it is obvious that those clients will be most affected by this legislation. Our association strongly endorses H.R. 2676, simply because persons with mental retardation and other disabilities would be better off upon its enactment. For a large proportion of our people with moderate to severe mental retardation, sheltered employment remains the main avenue toward competitive employment, increased income, and maximum personal independence as they reach adulthood.

It is our view that the passage of this amendment to section 14(c) of the Fair Labor Standards Act will significantly improve the operation of sheltered work programs, thus enhancing the potential for better training and higher wages for many persons with mental retardation. It also fully protects the handicapped worker by re-

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quiring wages to be based on the individual's productivity commensurate to wages paid nonhandicapped workers for the same type of work.

Under the bill's special certificate requirement, existing disincentives under the FLSA which currently work against certain handicapped sheltered employees will be eliminated. This will prove most valuable, particularly for those workers who are entering supported work programs operated by sheltered workshops outside of the facility and those workers whose earning potential varies markedly due to fluctuations in available types of work or personal work habits.

Another disincentive which would be removed is that provision in the FLSA which requires the physical separation of work activity from regular workshop clients. Numerous studies in the special education and rehabilitation fields in recent years indicate heightened potential for work-skill improvements by persons with handicaps, especially mentally retarded persons, when they are able to learn and be trained in an environment with nonhandicapped persons.

Such learning can take place by observation only, in some cases; yet the current 14(c) provision prohibits work activity center clients to be integrated with higher functioning sheltered workers and nonhandicapped workers. There is simply no valid programmatic or other justification to warrant separation of low functioning and high functioning workers.

Adopting H.R. 2676 will no doubt improve regular workshop and work activities operations, thus allowing more time for staff to devote to activities geared on improving client productivity and income. Under the current provision, workshops might be forced to develop and maintain dozens of individual certificates to comply with the FLSA. Such paperwork, obviously, takes valuable time away from workshop staff and lessens client training opportunities, the pursuit of better contract work, job placement, and other vital tasks. The current paperwork burden only keeps the workshop in compliance with the FLSA. It does not assist clients to earn more money, improve their skills, or get jobs in industry.

The removal of this paperwork burden should provide the management and professional staff of the facilities more time to devote to duties geared to improving the clients' lives. We firmly believe that H.R. 2676 will accomplish this worthy goal.

Passage of H.R. 2676 will turn the FLSA into a better protector of citizens with handicaps. The time for enacting this legislation has long since arrived. The ARC strongly urges this subcommittee to report this measure at the earliest possible time. We would like to commend the chief sponsor of this bill, Mr. Petri, and you, Mr. Chairman, for holding this hearing today.

Again, on behalf of almost 200,000 individuals with mental retardation currently being served and employed under the subminimum provision of the FLSA, we urge prompt passage of this important bill. To a significant degree, their ability to live and earn to the best of their abilities rests on this legislation.

Thank you.

[The prepared statement of Tony Records follows:]

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PREPARED STATEMENT OF TONY RECORDS ON BEHALF OF THE ASSOCIATION FOR RETARDED CITIZENS/U.S.

Mr. Chairman, my name is Tony Records and I am Director of the Pratt Monitoring Program for the District of Columbia Association for Retarded Citizens. I appear before you today representing the Association for Retarded Citizen/U.S., the largest organization in our country advocating on behalf of citizens who are mentally retarded. Over one-half of our approximately 160,000 members are parents of individuals who are retarded and many of our 1,300 local associations provide sheltered employment services. By way of introduction, the District of Columbia ARC has operated Work Skills Programs for more than 20 years. Currently, D.C. ARC serves more than 300 people who are mentally retarded in Sheltered Work Centers and nearly 40 of these workers are employed in Work Activities Programs. The people D.C. ARC serves in these programs range in their levels of mental retardation from severe to mild.

Having been with D.C. ARC for nearly 12 years, I have personally witnessed the benefit of helping people who are mentally retarded make major strides toward competitive employment. More specificaly, I have spent six of my professional years as a job placement specialist and learned first-hand what type of skills and behavior employers require in the competitive job market.

The Association for Retarded Citizens/U.S. wishes first to stress that this legislation under consideration today is one which will primarily affect persons with mental retardation. According to the latest Department of Labor statistics on sheltered employment based on data available on June 30, 1985, there are approximately 230,000 handicapped clients involved in sheltered employment. The vast majority of those people, 170,000, are working in Work Activity Centers and of this number, more than 90 percent are mentally retarded. A smaller percentage of people with retardation are also involved in regular sheltered work and training and evaluation programs, as well as some who work under individual certificates. Of the 5,034 DOL certified workshops, 4,145 are Work Activity Centers of which approximately 1,500 are dual programs on the same site housing both work activities and regular workshop programs. Since the vast majority of sheltered workshop clients are mentaily retarded, it is obvious that those clients will be most affected by this legislation.

Our Association strongly endorses H.R. 2676 simply because persons with mental retardation and other disabilities will be better off upon its enactment. For a large proportion of people with moderate to severe retardation, sheltered employment remains the main avenue toward competitive employment, increased income and maximum personal independence as they reach adulthood. It is our view that the passage of this amendment to Section 14(c) of the Fair Labor Standards Act will significantly improve the operation of sheltered work programs, thus enhancing the potential for better training and higher wages for many persons with mental retardation. It also fully protects the handicapped worker by requiring wages to be based on the individual's productivity commensurate to wages paid non-handicapped workers for the same type of work.

Under the bill's special certificate requirement, existing disincentives under the FLSA which currently work against certain handicapped sheltered employees will be eliminated. This will prove most valuable, particularly for those workers who are entering supported work programs operated by sheltered workshops outside of the facility and those workers whose earning potential varies markedly due to flucuations in available types of work or personal work habits.

Another disincentive which would be removed is that provision in the FLSA which requires the physical separation of work activity from regular workshop clients. Numerous studies in the special education and rehabilitation field in recent years indicate heightened potential for work skill improvements by persons with handicaps, especially mentally retarded persons, when they are able to learn and be trained in an environment with non-handicapped persons. Such learning can take place by observation only in some cases. Yet, the current 14(c) provision prohibits Work Activity Center clients to be integrated with higher functioning sheltered workers and non-handicapped workers. There is simply no valid programmatic or other justification to warrant separation of low functioning and high functioning workers. People who are mentally retarded want to live as normal lives as possible. They cannot learn and observe how their handicapped and non-handicapped peers work and behave by being forced to work separately from them. In this instance, the FLSA is stifling individual growth and development, something that was not likely envisioned when written. Changing this outdated, outmoded provision is reason alone to support H.R. 2676.

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Adopting H.R. 2672 will no-doubt improve regular workshop and work activities operations, thus allowing more time for staff to devote to activities geared on improving client productivity and income. Under the current provision, workshops might be forced to develop and maintain dozens of individual certificates to comply with the FLSA. Such paperwork obviously takes valuable time away from workshop staff and lessens client training opportunities, the pursuit of better contract work, job placement and other vital workshop tasks. The current paperwork burden only keeps the workshop in compliance with the FLSA. It does not assist clients earn more money, improve their skills or get jobs in industry.

The removal of this paperwork burden should provide the management and professional staff of the facilities more time to devote to duties geared to improving the clients' lives. We firmly believe that H.R. 2676 will accomplish this worthy goal.

The ARC/U.S. does recommend one change in the bill. We suggest the term "deficiency" be placed by the terms "handicap" or "disability". This change is recommended to incorporate in the FLSA language and terminology which is currently in use in other Federal statutes. In addition, the term "deficiency" has become outmoded in its use by professionals and has a certain negative connotation which could prove detrimental to the clients. Our recommended change will have no impact on eligibility or coverage under the Act.

Passage of H.R. 2676 will turn the FLSA into a better protector of citizens with handicaps. The time for enacting this legislation has long since arrived. The ARC strongly urges this Subcommittee to report this measure at the earliest possible time. We would like to commend the chief sponsor of this bill, Mr. Petri, and you, Mr. Chairman, for holding this hearing today. Again, on behalf of almost 200,000 individuals with mental retardation currently being served and employed under the sub-minimum wage provision of the FLSA, we urge prompt passage of this important bill. To a significant degree, their ability to live and earn to the best of their abilities rests on this legislation.

Mr. MURPHY. Thank you very much, gentlemen. The problem I have with this is that at the present time 50 percent of the minimum wage is about $1.67 an hour, barely $13 a day. My concern would be for those handicapped individuals who, not being able to seek employment in some other area in the community, are going to be paid next to nothing if you get below $1.67 an hour.

What protection do we have for those who are even more advanced in their skills? You have one certificate, and you just set what wage you feel is best in the sheltered workshop; and we've got these people working for $1 an hour or less. What guarantees, what assurances do we have to protect the handicapped worker in that regard?

Mr. JOHANSEN. We've had some discussions with Department of Labor, Mr. Chairman, on this issue. We would hope that, either in report language or somewhere in the bill, that——

Mr. MURPHY. Department of Labor, recently?

Mr. JOHANSEN. Yes, sir.

Mr. MURPHY. They want subminimum wage and teenage subminimum wage. I'm not so sure they're going to be out there protecting the nonwage handicapped person. They might go for a nonwage handicapped——

Mr. JOHANSEN. On this particular issue, I think they're quite concerned that wages to disabled individuals be quite fair. But we would like to see some provision in the regulation or in the language of the report that individuals not be reduced in the wages that they're earning, that there be a grandfathering period someway. We haven't given a great deal of consideration to how that would be done, but we would like to cover that point so that earning levels are not reduced.

As to the specific——

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Mr. MURPHY. That's earning levels for those who are presently there.

Mr. JOHANSEN. Presently there; yes.

Mr. MURPHY. However there's nothing to stop the person who is operating the sheltered workshop from phasing them out and phasing new people in at 75 cents an hour.

Mr. JOHANSEN. Well, they're required——

Mr. MURPHY. I know none of you would run your sheltered workshop that way, but there might be some out there that might.

Mr. JOHANSEN. Well, there might be.

Mr. MURPHY. We have to have the protections, and I'm suggesting that a little more latitude; and Mr. Petri's bill certainly has my interest because of the latitude that it will provide. But giving too much latitude to each individual sheltered workshop—we could very well have some slaves out there working.

Mr. COONEY. May I address that briefly?

Mr. MURPHY. Please.

Mr. COONEY. A certain amount of experiential data is available from the Department of Labor on this. I can't give you the exact numbers, so please don't hang me with them, but my memory indicates to me that one of the more significant violations that is found in wages paid is that there is a 50-percent minimum implied in these work activities center, that's what people get paid in many cases, and that the commensurate wage is not being properly computed for those individuals.

What we're proposing here is doing away with that floor and then having the records be addressed to the actual productivity of the individual.

Mr. MURPHY. Nothing prohibits them from paying the minimum wage or over the minimum wage at the present time.

Mr. COONEY. That's correct, but you know, at present this phantom workshop that we're talking about is going to create these people who are not being treated properly—certainly not at Goodwill, of course——

Mr. MURPHY. Certainly not.

Mr. COONEY. The assumption is, I have a rationale for paying people a wage. I will stick to that rationale, and they're all earning the minimum when some of them might very well be entitled to earning more than the minimum.

Mr. MURPHY. But your rationale under Mr. Petri's bill is zero.

Mr. COONEY. My rationale is——

Mr. MURPHY. Or 10 cents an hour, or 75 cents an hour.

Mr. COONEY. I think there's some compensation in that we are going to be required to run a tracking system on the productivity of each individual worker, and from that tracking system compute his commensurate wage. The emphasis is going to be on the productivity of the individual. That not only is going to contribute to determining what his real, fair wage ought to be, but it also is going to give some insight to the manager as to whether or not this person is making adequate progress, whether he's being properly supervised, motivated, if he's part of a team where there's adequate work models. In other words, that data is available for a lot of other things.

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I share your concern. We don't want anybody working for nothing. And even in situations in our workshops where people probably don't earn any significant amount, we certainly don't let them go home without enough to pay their way back and forth to work and have the minimum subsistence of life. That's a corporate policy, of course.

The problem you address is there, but I think that we're talking about a system which is aimed at identifying the productivity, skills, growth, and earning capacities of the individuals and removing the—just sort of assuming that this whole clump over here is entitled to 50 percent, and that's it.

Mr. MURPHY. Mr. Petri.

Mr. PETRI. I really have no questions. I'd like to thank you all for your testimony. I guess, just to say, too, that looking just at the wages is looking myopically at what is going on with these people, because there's a whole support network out there, and I think an awful lot of people who are handicapped derive enormous satisfaction from participating in a workshop environment and it increases their self-worth. Even if you start out at practically nothing in wages, that doesn't mean that they are living on that. They are getting disability or various other grants and supports, and at the same time a constructive experience rather than sitting around looking at the wall, and maybe a feeling that there is some hope and a chance of contributing as well as receiving from society. That's worth an awful lot to these people. Then you can move on up.

So you will be able to get more into this environment. You're not forcing anyone into it, but you will be able to get more into this environment and reach—and hopefully enrich the lives of more people if there were greater flexibility, and if we brought the laws up to current reality rather than trying to freeze the situation in the law that existed 20 or 30 years ago.

I think that's accurate. I appreciate your testimony.

Mr. MURPHY. Thank you very much, gentlemen.

The next witness is Ms. Susan Meisinger, Deputy Under Secretary for Employment Standards, U.S. Department of Labor.

Ms. Meisinger.

STATEMENT OF SUSAN MEISINGER, DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR

Ms. MEISINGER. Good morning.

Mr. MURPHY. Good morning. You may proceed.

Ms. MEISINGER. First, I'd like to introduce Mr. Art Korn who is with me. He is the chief of the Branch of Special Employment within the Wage and Hour Administration, and has special expertise in the area of sheltered workshops. To the extent questions come up that I'm not able to handle, I'm sure he will be of some assistance.

I'd like to submit my formal statement for the record and briefly summarize, in the interest of time.

Mr. MURPHY. Thank you. It will be admitted.

Ms. MEISINGER. Basically, the Fair Labor Standards Act has authorized the employment of handicapped workers at special mini-

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mum wages since it was enacted in 1938. These provisions were put in the act to permit handicapped workers to obtain and hold jobs. To the extent necessary, in order to prevent the curtailment of opportunities for employment, section 14(c) of the present law authorizes the Secretary of Labor to provide for the employment of persons handicapped by age or physical or mental disability at special minimum wage rates below the applicable minimum which is currently $3.35 an hour.

To ensure that these workers are fairly paid, the FLSA requires that a handicapped worker under a special minimum wage authorization be paid on the basis of his or her productivity as it compares with the productivity of the nonhandicapped for essentially similar work up to $3.35, the minimum wage.

The FLSA and implementing regulations provide for several types of programs to accommodate the training needs and varying productive abilities of the handicapped workers in sheltered workshops. Thus, the more productive workers are required to be paid at least 50 percent of the minimum wage or at rates up to the full minimum wage commensurate with their productivity, whichever is higher.

The beginning workers who are participating in evaluation or training programs of limited duration are required to be paid at earnings commensurate with their productivity. Similarly, the wages of severely impaired workers, the multihandicapped, for example, in work activity centers are based solely on their productivity.

A work activity center is defined in the law as a center which has been planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

The Department has long interpreted this statutory mandate to mean clients of work activity centers must be physically separated from other handicapped clients of a workshop. Within the sheltered workshop handicapped population, there has been a growing number of workers in recent years and a change in the mix of workers' disabilities.

In 1969 there were about 1,100 certified sheltered workshops employing nearly 52,000 workers. Today, there are some 5,000 certificated workshops employing slightly over 230,000 handicapped workers. In 1969, work activity centers accounted for slightly under one-third of the total handicapped worker population in sheltered workshops. Today, these work activity centers account for almost 80 percent of all sheltered workshop employment.

Each workshop annually is required to furnish information on its operations during the previous year in an application for a certificate, including the types of disability groups they serve, the services they provide, the types of work programs they have, how the wage scales for handicapped workers are determined, the average earnings of the workers, and certain financial information.

This information is reviewed by specialists in our regional office, and appropriate certificates are issued authorizing payment of special lower minimum wages, as appropriate.

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If problems are found, there is follow-up with the workshop to resolve them before action is taken on their application.

H.R. 2676 would amend the FLSA to provide that wages paid to handicapped workers employed under certificates be commensurate with those paid to nonhandicapped workers employed in the vicinity in which workers under the certificates are employed for essentially the same type, quality, and quantity of work.

The bill would eliminate the requirement for separate certificates for various groups of handicapped workers based on the severity of their disability. It would also eliminate the requirement that clients of work activity centers be physically separated from other handicapped workers.

The purpose of these changes is to eliminate artificial barriers between handicapped workers in work activity centers and handicapped workers in other working programs. They would give more severely handicapped workers the opportunity to work with more productive workers. This would afford them the opportunity to increase their productivity and to perform a wider variety of tasks.

The administration supports the goal of this legislation, which we understand to be the elimination of artificial barriers to the employment of handicapped workers. The Department of Labor will work with this subcommittee and the affected groups developing this legislation further.

With that, I'd like to take any questions that you might have. If I might, initially, note: one of the questions that was asked earlier dealt with those that have guaranteed minimums of the 50 percent. I think it's important, and I'll ask Mr. Korn to correct me if I'm off base on this, to note that, of the 230,000 employees currently covered by the sheltered workshop program, there are only about 30,000 of those who have some sort of guaranteed minimum.

Mr. MURPHY. What rate is that minimum?

Ms. MEISINGER. Well, it would be at least 50 percent, plus any other based on their productivity.

Mr. MURPHY. Now the others who are working.

Ms. MEISINGER. 200,000.

Mr. MURPHY. How many are at least at the base where they have a protected wage?

Ms. MEISINGER. Based on the certification, where there's a minimum wage, there is a special certification for 50 percent guaranteed.

Mr. MURPHY. How many of the 230,000 are protected by that? All of them.

Ms. MEISINGER. 30,000.

Mr. MURPHY. 30,000.

Ms. MEISINGER. The bulk of the people covered by this provision of the law are in work activity centers where they are currently required to be paid commensurate with the wage rates, commensurate with their productivity.

Mr. MURPHY. They're all being paid at least 50 percent of the minimum wage.

Ms. MEISINGER. No; no. And in large part, they're below the minimum—below 50 percent.

Mr. MURPHY. Even this 30,000? What about the other 200,000?

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Ms. MEISINGER. No; I'm not being clear. I wish I could be clearer. Do you want to try and take this?

Mr. KORN. All 230,000 workers in sheltered workshops are required to be paid on the basis of their individual productivity.

Mr. MURPHY. Commensurate with their productivity.

Mr. KORN. Right. In addition, 30,000 have a guaranteed wage of at least 50 percent of the statutory minimum wage.

Mr. MURPHY. Are they the more productive workers?

Mr. KORN. They are the more productive workers.

Mr. MURPHY. In other words, they're commensurate, too. You're telling me all 230,000 are commensurate, with their ability to produce.

Mr. KORN. Right. In addition, there's this guarantee for 30,000 of the more productive workers.

Mr. MURPHY. But only 30,000 of the 230,000 have attained the productivity to be at one-half of minimum wage?

Mr. KORN. That's right.

Mr. MURPHY. Or above.

Mr. KORN. Right.

Mr. MURPHY. The other 200,000 now are being paid below one-half minimum wage. Correct.

Ms. MEISINGER. They do not have a guarantee.

Mr. KORN. For the most part, yes.

Ms. MEISINGER. For the most part.

Mr. MURPHY. Do not have a guarantee. You mean in their certificate?

Ms. MEISINGER. Exactly.

Mr. MURPHY. So they can be paid commensurate with their ability in accordance with the operators or the administers of the sheltered workshop. How low does that go? Do you have those broken down into categories?

Mr. KORN. Well, they can go as low as any figure above zero, depending on the productivity of the particular individual. So that a very severely impaired worker might be at 10 percent of normal productivity.

Mr. MURPHY. Well, then the last panel believed that this bill was needed to get them down that low.

Ms. MEISINGER. I think one of the major concerns with the bill is the paperwork burden that we are mandated to require, based on the statutory language, for different kinds of programs. This amendment would simply make one simple certification process, and still require them to keep records on each individual employee.

The other area that we have heard a great deal of complaint, and where we have requested and continually been told by the Solicitor we don't have any flexibility, deals with what's called the white line issue, where employees in a work activity center have to be kept separated from those that are more productive.

I believe, and I hesitate to speak on their behalf, they want the flexibility to make assignments of people within a workshop, but we do spend time during our investigation to make sure that those people who are covered by the work activity center provisions are kept separate.

Mr. MURPHY. Why? Is it because the law says it?

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Ms. MEISINGER. Our solicitors have interpreted the statute for a number of years requiring us to do that.

Mr. MURPHY. What do you think about that?

Ms. MEISINGER. I think it's something that deserves a lot of study. We could improve the system by giving more flexibility. And for our own people, it would reduce some of the paperwork burdens that we have to deal with. As much work as these shops have to put together we have to review, rather than looking for whether there is a white line down the center of the floor, whether the people are being paid consistent with their actual productivity.

When our people are doing the investigations can actually look, to spend more time. Each hour that they don't have to spend on the white line issue, they can spend determining whether people are being paid consistent with their productivity.

There are instances where there's a white line down middle of the shop.

Mr. MURPHY. Mr. Petri?

Mr. PETRI. I think I understood your testimony. You might correct me or want to comment on it. If this legislation were adopted, it would either result in some savings in administrative costs or free up people in the Labor Department to concentrate on checking up on making sure people were paid according to their productivity rather than that they were artificially separated, as now is required.

Ms. MEISINGER. I can't give you a quantified estimate on that right now, but I think it's safe to say that, to the extent that our people don't get tied up in one thing, they're going to be freed up to do some other activities, investigative activities.

Mr. PETRI. Thank you.

Mr. MURPHY. Thank you very much for being with us this morning.

[The prepared statement of Susan Meisinger follows:]

PREPARED STATEMENT OF SUSAN R. MEISINGER, DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee:

Mr. Chairman, I want to thank you for your interest in the application of the Fair Labor Standards Act (FLSA) to sheltered workshops, and for holding this hearing today to discuss the operation of sheltered workshops and H.R. 2676, Congressman Petri's bill to amend the sheltered workshop provisions of the Act.

Sheltered workshops play a role in expanding the employment opportunities of handicapped and severely handicapped individuals. In many instances, there have been no alternatives which provide handicapped individuals a chance to develop job skills, and to experience work in an environment similar to one most of us take for granted. Because the FLSA applies to employees producing goods for interstate commerce, the Congress enacted special minimum wage provisions in the Act tailored to conditions in sheltered workshops. I believe that this is an appropriate time for the Department of Labor and the Subcommittee to examine these provisions to determine whether they continue to properly address the needs of those employed in sheltered workshops.

As we review these provisions, I think we must consider two basic points. Because the workshops provide such a public service, it is critically important that they remain fiscally viable. Also, the workshops provide handicapped individuals an opportunity to achieve a degree of self-worth because of the wages they earn. I hope that this Sub-committee will keep these objectives in mind during its review of the FLSA as it applies to sheltered workshops.

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Before I discuss Congressman Petri's bill, I would like to describe how the FLSA applies to sheltered workshops and how we administer the program so that we can put that proposal into perspective.

The FLSA has authorized the employment of handicapped workers at special minimum wages since it was enacted in 1938. These provisions were put in the Act to permit handicapped workers to obtain and hold jobs. To the extent necessary in order to prevent the curtailment of opportunities for employment, Section 14(c) of the present law authorizes the Secretay of Labor to provide for the employment of persons handicapped by age or physical or mental disability at special minimum wage rates below the applicable minimum, which is currently $3.35 an hour. To ensure that these workers are fairly paid, the FLSA requires that a handicapped worker under a special minimum wage authorization be paid on the basis of his or her productivity as it compares with the productivity of the nonhandicapped for essentially similar work, up to the $3.35 minimum wage.

The FLSA and implementing regulations provide for several types of programs to accommodate the training needs and varying productive abilities of the handicapped workers in sheltered workshops. Thus, the more productive workers are required to be paid at least 50 percent of the minimum wage or at rates, up to the full minimum wage, commensurate with their productivity, whichever is higher. The beginning workers, who are participating in evaluation or training programs of limited duration, are required to be paid at earnings commensurate with their productivity. Similarly, the wages of severely impaired workers, the multihandicapped, for example, in "work activities centers," are based solely on their productivity. A "work activities center" is defined in the law as a center which has been "planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so servere as to make their productive capacity inconsequential." The Department has long interpreted this statutory mandate to mean clients of work activities centers must be physically separated from other handicapped clients of a workshop—in other words, not intermingled with them. Also, to assure that handicapped individuals in work activities centers are, in fact, inconsequential producers, as required by law, tests to measure their average productivity or average earnings have been established by regulation.

Most of the handicapped workers in this country are engaged in competitive employment and are paid the minimum wage or more. They are fully productive and compete with nonhandicapped workers in most occupations. The handicapped workers we are discussing here today represent a small but significant minority of the total handicapped worker population.

Within the sheltered workshop handicapped population, there has been a growing number of workers in recent years and a change in the mix of workers' disabilities. In 1969 there were about 1,100 certified sheltered workshops employing nearly 52,000 workers. Today there are some 5,000 certificated workshops employing slightly over 230,000 handicapped workers.

In 1969, work activities centers, where the most severely handicapped individuals are employed, accounted for slightly under a third of the total handicapped worker population in sheltered workshops. Today, these work activities centers account for almost 80 percent of all sheltered workshop employment.

We do note that the Department of Education has just put into place a number of new supported employment programs which are designed to increase employment opportunities for severely handicapped individuals in more integrated settings.

Mr. Chairman, there are two major activities involved in the Department of Labor's administration of the FLSA with respect to sheltered workshops—one is the certification authorizing payment of lower minimum wages to the handicapped workers who are not fully productive, and the other is the investigation program to ensure compliance with the requirements.

Each workshop annually is required to furnish information on its operations during the previous year, in an application for a certificate, including the types of disability groups they serve, the service they provide, the types of work programs they have, how the wage scales for handicapped workers are determined, the average earnings of the workers, and certain financial information. This information is carefully reviewed by specialists in our regional offices and if no problems are found, appropriate certificates are issued authorizing payment of special lower minimum wages, as appropriate. If problems are found, there is follow-up with the workshop to resolve them before action is taken on their application.

In issuing certificates, the certification specialists must be able to determine, by reviewing the data submitted, whether the workshop is likely to be in compliance with the commensurate wage requirements. Applications which indicate problems are set aside for follow-up. We also seek to encourage compliance. In this regard, we

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have initiated a series of formal area conferences for workshop personnel to educate them as to the requirements of FLSA and the regulations. This is in addition to the technical assistance we provide on an individual or small group basis.

Supplementing the certification program is an investigation program conducted by compliance officers specially trained to do sheltered workshop investigations. Currently, we are investigating about 10 percent of the workshops each fiscal year. In fiscal year 1984, our compliance field staff found over $1.6 million in underpayments and nearly 6,500 workers were found to be paid in violation of the monetary requirements of the FLSA.

During the course of a typical investigation, the investigator will look not only at the payroll records, but also at time studies and background documentation, to assess the adequacy of the wage rates. Where time studies appear to be inadequate or incorrect, the investigator may ask the workshop to reconduct them or may conduct them on his or her own. The Wage and Hour Division has provided special traning or instruction to these investigators to enable them to evaluate time studies.

Investigators must also be able to evaluate how workers are paid relative to their productivity in relation to nonhandicapped workers during similar work in the vicinity. To do this, the investigator must be able to determine the nature of the job and evaluate the source and timeliness of the wage data.

With this background in mind, Mr. Chairman, I will now discuss Congressman Petri's bill. H.R. 2676 would amend the FLSA to provide that wages paid to handicapped workers employed under certificates be commensurate with those paid to nonhandicapped workers employed in the vicinity in which workers under the certificates are employed for essentially the same type, quality and quantity of work. This provision would replace the current provisions for handicapped workers in sheltered workshops which I described earlier.

The bill would eliminate the requirement for separate certificates for various groups of handicapped workers based on the severity of their disability. It would also eliminate the requirement that clients of work activities centers be physically separated from other handicapped workers. The purpose of these changes is to eliminate artificial barriers between handicapped workers in work activities centers and handicapped workers in other workshop programs. They would give more severely handicapped workers the opportunity to work with more productive workers. This would afford them the opportunity to increase their productivity and to perform a wider variety of tasks.

Because the Petri proposals relies on productivity to determine commensurate earnings and because a vast majority of handicapped workers in sheltered workshops are currently paid on the same basis, it would not change in a major way the method of determining the pay of these workers.

The Administration supports the goal of this legislation which we understand to be the elimination of artificial barriers to the employment of handicapped workers. It is important, as the legislative process continues, that a key part of the sheltered workshop program be maintained—the sense of accomplishment and self-respect derived by the handicapped workers from the income they have earned. The Department of Labor will work with this Subcommittee and the affected groups during this legislative process.

Mr. Chairman, this concludes my statement. I will be happy to respond to your questions.

Mr. MURPHY. The next panel is Mr. James Gashel and Mr. James Wells.

STATEMENT OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND

Mr. GASHEL. Thank you, Mr. Chairman. My name is James Gashel, and I am director of governmental affairs for the National Federation of the Blind. As with the other witnesses, my statement is, of course, submitted, and I will summarize.

In the first place, whether it has any relevance or no' I think I should probably point out that in the case of the National Federation of the Blind, our constituency is blind people. Up until this point in the hearing, we have heard from the managers of institutions or sheltered workshops that employ handicapped people. I think it's always relevant in hearings where we're talking about

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labor standards to point out which side represents the worker interests—after all, those are the people that are getting paid on these certificates—and which side represents the management interests.

I don't see the AFL-CIO or any other unions here, but it will have to fall at the moment to the National Federation of the Blind to at least represent that point of view.

Now I think we should really remember why section 14(c) came about in its present form in the first place, because it was pointed out here that there has been an exemption in the law since 1938, and that's true. The exemption once was as broad as H.R. 2676 calls for, and Congress became concerned in the 1960's that we actually had wage abuse going on in the sheltered workshops, and that the wages were too low.

They're still too low, but Congress was being asked to either abolish the subminimum wage altogether or do something about this wage abuse. So at the time it made sense, apparently, and was politically possible for Congress to walk the line between, on the one hand, eliminating the subminimum wages altogether that relate to the handicapped, or on the other hand, continuing the practice of the broad exemption.

The interests of the sheltered workshops did not support ending the broad exemption, and they still don't support having the current form of section 14(c), because it does mean that paperwork has to be done. But after all, that paperwork is being demanded by the Department of Labor under the law to justify paying people less than the minimum wage.

We have really created in the law a creature, a subclass of workers in this case, people who are going to be paid less than the minimum wage. The least we owe these people is some form of protection to be sure that they're not being exploited. And to simply enact one granddaddy certificate of exemption would take us back to pre-1966 law, which Congress wisely overturned.

Now there is a point of agreement here, and I think I want to underscore that. That is, so far as we're concerned, we don't support the present form of section 14(c) either. We think it's not defensible in philosophy, theory or administration, certainly. And there's a lot of violations of section 14(c); but the way to correct those violations is not to open the door to permit what's going on. The way to correct those violations is to write a law which appropriately treats workers.

We have a wide variety of workers under one grand statute here in section 14(c), and that's why there are so many gradations of subminimum wage certificates. You know, there are anything from very productive people who can work very successfully in regular industry except they can't find a job there, down to people who just can't produce anything at all. We're all covered under one statute.

For example, in the National Industries for the Blind system, which produces a lot of pens and products for the Federal Government, you know, $200 million worth of merchandise is made in 100 sheltered workshops in a year. That's a lot of productivity out of 5,000 workers. Those people are highly productive. Then to say that they should not have at least a 50-percent minimum wage guarantee, by passing H.R. 2676, would be wrong. They should have a

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minimum wage guarantee, quite frankly. But at least under the present law, they have a 50-percent minimum.

Let me just summarize what we would make as overall recommendations here. H.R. 2676 should not be enacted in its present form. Congress should continue the policy of requiring that regular sheltered workshops be separated from work activity centers. The law should continue to require that work activity centers be planned and designed exclusively for therapeutic benefits for the clients who are there.

The need of productive workers to maximize their productivity in order to earn the highest wage that they can should not be compromised by mixing them with nonproducers, into the same work force.

Therapy programs should not be scrapped in favor of a common work program.

Second, legislation aimed at a complete reform of the philosophy and operation of section 14(c) should be prepared, and Congress should act on it as soon as possible. An option which we favor is also before this subcommittee, in the form of Representative Marilyn Lloyd's bill, H.R. 808, calling for a ban on subminimum wage payments in the case, in the discreet case of blind and visually impaired workers.

Another possibility for Congress to consider would be to set up a mechanism for allowing groups of workers to petition out from under the subminimum wage program, under theories and justifications in the law that might be established. But we are vehemently opposed to absent reforms like these, ending the current system in favor of H.R. 2676.

I'm going to very quickly summarize some of the other reasons why that is so. In the first point of our statement we mentioned the point that's been made here about ending the minimal wage protection features of the law, which now exist. Those have been well discussed. That's the 50-percent-or-higher guaranteed minimum. Plus the other certification requirements, because you know, it isn't just supposed to be like falling off of a log to obtain these subminimums.

You're supposed to be able to justify that with the Department of Labor, but all of those protections that workers now have would be ended.

The second point is that H.R. 2676 would in fact result in lower wages for handicapped workers. Productive workers would be forced to slow down in order to match their output with the more severely handicapped nonproducers that are being absorbed from the work activity center.

Productivity is the basis for pay rates under section 14(c), and that wouldn't change under H.R. 2676. So that bill then, asks handicapped workers to take a pay cut in order to accommodate the lesser skills of the nonproducers, and the desires of management to simplify their paperwork.

The policy of the current law says accurately that handicapped people are simply not one single homogeneous lot. Some are very productive, and their productivity should be maximized. Some are not productive, and they need therapy; and they should not lose that opportunity.

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The third point is that H.R. 2676 would make enforcement of section 14(c) administratively difficult. You think it's administratively difficult now. Consider the fact of having to maintain 230,000 individual certificates for individual pay rates to justify that each individual is getting the wage that they're supposed to get. I don't think the Department of Labor can handle the current certification system where they have group exemptions. Imagine if we were to place upon them the burden of 230,000 individual certificates.

I think the fourth point also needs to be underscored. That is that you're really depriving, in this legislation, both groups of workers the special benefits that the law intends to provide to them. On the one hand the productive workers need to maximize their productivity. But then on the other hand, the work activity center is a valid concept.

There are, apparently, a lot of people who simply don't have enough productivity and their productivity is, under the law, inconsequential. Well, these people are today supposed to be in a work activity center where there is a special program planned and designed exclusively for therapeutic benefits.

This is not productive work. That's the handicapped program that was being talked about, and that's, I think, a legitimate point. But on the other hand, we have a labor standards issue for the people who are trying to be productive, and they must also be protected.

Mr. Chairman, I think that having said all that, I'll cease and be glad to respond to any questions. Thank you very much.

[The prepared statement of James Gashel follows:]

PREPARED STATEMENT OF JAMES GASHEL ON BEHALF OF THE NATIONAL FEDERATION OF THE BLIND

Mr. Chairman, my name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind (NFB). My address is 1800 Johnson Street, Baltimore, Maryland 21230. I appreciate the opportunity you have provided me to be heard during this review of a bill (H.R. 2676) amending Section 14(c) of the Fair Labor Standards Act (FLSA).

In a moment, Mr. Chairman, I will present our position on H.R. 2676, the bill which is before the Subcommittee today. First, however, I will explain the source of our interest in the subject matter of this legislation. NFB is a membership organization *of* blind persons. We are the rank and file blind. Thousands of our members do not have jobs at all. Those who do work are typically underemployed. Several thousand work in sheltered workshops, and well over a third of these individuals are paid under the subminimum wage provisions of Section 14(c) of the FLSA. Each of these blind persons is a possible target for subminimum wages because their employers (sheltered workshops) either hold or could qualify for the subminimum wage certificates issued by the Department of Labor. In short, we speak from the vantage point of the people we represent—blind workers. Other groups who will testify in this hearing will present the mangement side of the issues raised in H.R. 2676.

Mr. Chairman, we are opposed to enacting H.R. 2676 in the absence of a more forthright and thorough-going attempt to remedy the inequities present in Section 14(c) of the FLSA. The proponents of this legislation have argued for a simplification of the current law in order to make the subminimum wage requirements simpler to administer and easier to enforce. What they do not explain, however, is the devastating impact this proposal would have on the wages of handicapped workers.

As presently enacted, Section 14(c) applies to a very broad range of workers who, Congress felt, might suffer curtailment of employment opportunities if there employers are required to pay the minimum wage under Section 6 of the FLSA. Putting to one side the question of whether the concept of Section 14(c) is valid, there is plenty of evidence pointing to unfair treatment of workers and abuses of the current law, whether intentionally or unintentionally. Amendments to Section 14(c) should attack these problems, not exacerbate them. However, H.R. 2676 will, in our

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judgment, promote further deterioration of the limited protection which now exists for workers who are the targets of Section 14(c).

Let me hasten to note, Mr. Chairman, that we do not come before this Subcommittee to defend either the theory or the administration of Section 14(c). Both are subject to serious challenge. We do not support Section 14(c) in its present form; nor do we believe that its administration is equitable. But, H.R. 2676 is not the kind of reform that is needed. In fact, this is not reform at all. Rather, it would be a backward step to enact H.R. 2676 absent other amendments. All classes of handicapped workers would suffer if the certificates which now categorize each level of productivity are abandoned in favor of one "granddaddy" certificate. Our specific comments follow.

ANALYSIS OF H.R. 2676

(1) H.R. 2676 would eliminate important productivity distinctions and certification requirements now intended to provide wage protection for handicapped workers.

Paragraph (1) of Section 14(c) requires that the exemption granted to a workshop may not be less than 50% of the statutory minimum established by Section 6 of the FLSA. Depending upon the productivity of the workforce in any given workshop, the paragraph (1) exemption granted by the Secretary of Labor may actually require a floor wage which is higher than 50% of the statutory minimum. However, a paragraph (1) exemption will not be lower than 50% of the minimum. This is the exemption rule which applies to the workforce of an entire workshop.

Paragraphs (2) and (3) of Section 14(c) permit exemptions below the standard of paragraph (1). Paragraph (2) permits individual worker exemptions, if certain conditions are met. These are not group exemptions, however. The paragraph (3) exemption establishes in the law, the concept of a "work activity center," and sets the center apart from the more productive environment of a regular sheltered workshop. The work activity center is intended specifically for groups of workers whose productivity is inconsequential and incidental to the therapeutic purposes of the program. In fact, therapy is supposed to be the "exclusive" activity of the center, and the program is supposed to be "planned and designed" for this and no other purpose.

In sum, there are presently two classes of group exemptions under Section 14(c). The first is the paragraph (1) exemption, requiring no less than 50% of the minimum wage. The second is the paragraph (3) exemption, permitting pay rates in work activity centers to be below the paragraph (1) exemption. The difference in the two groups of workers is supposed to be their productivity. Those who work in a regular workshop are more productive, and the law recognizes this by protecting them with a floor wage which cannot be below 50% of the minimum, but may be higher. On the other hand, the work activity center clients are not productive; hence, the law does not require a pre-determined floor wage. Thus, the rate of pay for work activity center clients is supposed to be based only on individual productivity, without any other form of wage protection such as the 50% or higher minimum which applies to the workers in a regular workshop.

In light of this discussion, the change proposed in H.R. 2676 threatens to obliterate entirely the minimal wage protection for handicapped workers now provided in the paragraph (1) exemption. Under the bill, there would be only one category of exemption. It would allegedly be based on the productivity of each individual. For the more productive individuals, there would be no protection afforded them by the general workshop group exemption, because there would be no group floor measure of productivity; hence no floor wage for the group. For the least productive workers who are now assigned to a work activity center, the special therapeutic program which must be planned and designed to meet their individual needs would be eliminated. These least productive individuals would become mixed in with the general workforce, and the true productivity of each individual in that workforce would become obscured and utterly impossible to measure. This is an entirely undesirable and unacceptable policy.

(2) H.R. 2676 would result in lower wage rates for handicapped workers. The concept of Section 14(c) is to base wages on individual worker productivity as compared to that of nonhandicapped workers for essentially the same type, quality, and quantity of work. This emphasis on productivity in relationship to wages has been cited as the virtue of Section 14(c). In this connection, the promoters of H.R. 2676 want to integrate persons with inconsequential productivity alongside productive handicapped workers. What they do not disclose, of course, is the price to be paid and who will pay it. The integration of nonproducers into the more productive work environment will occur with the elimination of the work activity center certificate. So non-

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producers will be placed immediately alongside productive workers, and their inability to perform their share of the work will inevitably impact upon their more productive neighbors in the workforce.

Handicapped workers are as much entitled to wage protection as are others in our nation's labor force. They should be held harmless from the consequences of integrating nonproducers into the regular work environment. Under the present law, the physical separation of nonproducers who are placed in a work activity center makes an appropriate distinction between persons who are employed to produce goods on the one hand and individuals who need therapy on the other. The current separation recognizes that handicapped workers are not a homogeneous group. Some can be productive, others cannot be. Separating them is an equitable mechanism for assuring the members of each group the opportunity to earn according to their productivity, which is the purpose of Section 14(c). Combining the groups would overlook the actual distinction between productive handicapped workers and handicapped clients who need therapy. This distinction is not arbitrary or useless—it is a matter of equity and justice.

All of the recent studies agree that wages in sheltered workshops (even for the most productive workers) are inadequate. A 1979 report, issued by the Department of Labor, said that over half of the workers in workshops for the blind were paid less than $1,500 annually. Enactment of H.R. 2676 would force additional wage reductions on these workers. Bear in mind that these handicapped workers are not protected by collective bargaining agreements or the minimum wage. The only form of wage protection which they have is the productivity standard and 50% floor rate now in paragraph (1) of Section 14(c). If they are now forced to carry the nonproducers, their wages will inevitably go down. How much they will suffer will depend upon the number of nonproducers who are placed in the integrated work activity program.

(3) H.R. 2676 will actually make Section 14(c) administratively more difficult to enforce. Reports of the Department of Labor and the General Accounting Office confirm that Section 14(c) is fraught with violations. This is not uncommon with other provisions of the FLSA, as well. Enforcement of these laws is often difficult, due in large part to the number of workers involved, the scarcity of resources for enforcement by the Department of Labor, and to the complexity of the laws set up to protect workers against wage abuse. But these factors will certainly not be overcome by placing every individual worker on an individual subminimum wage certificate as called for in H.R. 2676. Imagine the mounds of paperwork that will be required to justify the individual certificate rate for each of the hundreds of thousands of workers that are now subject to Section 14(c) if it is actually easier to enforce a system of individual pay rates for all workers (handicapped or not) based on individual productivity, then why have the minimum wage at all? The fact is that a pay rate system solely based on individual productivity measures would smother the Department of Labor in paperwork, and there would be little time left over for anyone to worry about enforcement.

In contrast, the current system of Section 14(c) at least provides for a physical separation on nonproducers. Then it is easy for the Department of Labor to determine if the distinctions between nonproducers and productive workers are being observed. But H.R. 2676 proposes to mix everyone together.

(4) H.R. 2676 would destroy the separate missions of regular workshops on the one hand and work activity centers on the other. The regular sheltered workshop is designed to employ handicapped workers who have the capacity to produce certain commodities. It is not a therapy center. It is a place of employment. At least in theory, the pay is based on productivity and represents a primary source of income for the handicapped worker. The individuals remain at the workshop essentially for this reason—their work puts food on their tables. It does not matter in the slightest that the employer is a so-called nonprofit institution. The relationship is employer to employee. Working in the workshop is an ordinary job.

On the other hand, the clients of a work activity center are receiving therapy. Their productivity is inconsequential; hence, their earnings from the center are minimal. The clients are not financially dependent upon the fruits of their own labors. The primary source of their financial support is income maintenance programs such as those of the Social Security Administration. The benefits of the center are therapeutic, not remunerative. By law, producitvity in a work activity center is "inconsequential."

Section 14(c) recognizes this distinction between a regular sheltered workshop and a work activity center by authorizing different categories of minimum wage exemptions. The physical separation provides some degree of assurance that the production workers will have the opportunity to maximize their productivity, while the cli-

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ents of a work activity center will receive the therapy and training they deserve. Removing the separation will simply mean a blending of the productive workforce with the clients who need therapy, not work. Both groups will lose their identities and distinctive programs in the process.

In this connection, it is worth noting that H.R. 2676 eliminates more than just the physical separation of a work activity center from a sheltered workshop. Consider, for instance, the significance of discarding the requirement currently in paragraph (3) of Section 14(c) that a work activity center is a unit "planned and designed exclusively" for therapeutic purpsoes. Under H.R. 2676 there would be no requirement for a work activity center and no requirement for a program "planned and designed exclusively" for therapeutic purposes. As a result, the special services, which are "planned and designed" to aid individuals who are most severely and multiple handicapped, would be lost. In place of this assistance we would find a work program—just like the work of a regular sheltered workshop—but of course the wages would be even lower.

RECOMMENDATIONS AND CONCLUSION

(1) H.R. 2676 should not be enacted in tis present form. Congress should continue the policy of requiring that regular sheltered workshops be separated physically from work activity centers. The law should continue to require that work activity centers be planned and designed exclusively for therapeutic purposes. The need of productive workers to maximize their productivity in order to earn higher wages should not be compromised by mixing nonproducers into the same workforce. Therapeutic programs for those who need them shoud not be scrapped.

(2) Legislation aimed at a complete reform of the philosophy and operation of Section 14(c) should be prepared, and Congress should act on it as soon as possible. An option we favor is before this Subcommittee in Representative Marilyn Lloyd's bill, H.R. 808, calling for a ban on subminimum wage certificates in the case of blind or visually impaired workers. Another possible approach to this would be to set up a mechanism for allowing groups of workers to petition out from under the subminimum wage exemptions. Absent these reforms, we are vehemently opposed to H.R. 2676 for the reasons I have just described.

There is no dispute, Mr. Chairman, that Section 14(c) of the FLSA is desperately in need of reform. What may have made sense in 1966 is not necessarily good policy or in the interests of the handicapped people in 1985 due in part to major changes in the position of handicapped people in our society and to advances in our state of knowledge about what handicapped people can do. However, in the name of reform and simplification of the law, we should not eliminate those features of that law which are intended to curb exploitation and to protect workers from abuse. Indeed, there have been substantial changes in the handicapped workforce, not to mention the methods of production which have enabled many of us to achieve productivity never dreamed of when Section 14(c) was originally enacted and subsequently amended. This is especially true of those workers who are blind and yet the targets of the Section 14(c) exemptions. For these workers, the certificates issued to their employers by the Untied States Department of Labor are no longer a ticket to employment opportunities. Rather, they are a license for wage exploitation by managers of sheltered workshops. That's why we support Mrs. Lloyd's bill, H.R. 808.

Mr. Chairman, to sum up our position, the time has now come for Congress to re-evaluate the subminimum wage policy and to restructure the law in order to put an end to the wage exploitation which is now permits. H.R. 2676 would not end this exploitation, it would only compound the problem. Passing this bill is a sure way to lower the wages for handicapped workers. Congress should not permit this, even if it would serve the convenience or motives of management.

Mr. MURPHY. Mr. Wells.

STATEMENT OF JAMES W. WELLS, RALEIGH LIONS CLINIC FOR THE BLIND, RALEIGH, NC

Mr. WELLS. Mr. Chairman, Mr. Petri, my name is James W. Wells. I'm executive director of the Raleigh Lions Clinic for the Blind in Raleigh, NC; and I'm also president of the General Council of Workshops for the Blind.

With me today is Gibson Deterroil from the Lighthouse for the Blind of Houston, TX. Mr. Deterroil is the president of that agency.

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His agency operates an extensive work-activity center, and he's with me to respond to questions that you might have.

The members of the General Council of Workshops for the Blind operate 104 rehabilitation facilities located throughout the United States, the District of Columbia, and Puerto Rico. These facilities provide a special employment for 5,791 blind and multihandicapped blind persons in fiscal year 1984. Blindness, a sensory deprivation handicap, which represents only 5 percent of the total handicapped population, is distinctly different from other physical handicaps in its effect on most facets of living.

Blind persons have unique needs. Separate identifiable services by specialized, trained professionals have been found essential in meeting the rehabilitation needs of blind persons.

The General Council of Workshops for the Blind recognizes that the vast majority of persons being served in sheltered workshops under Department of Labor minimum-wage exemption certificates are mentally or developmentally disabled with a wide variety of handicapping conditions, including severe emotional and behaviorial problems. In many cases, these behaviors cause irregular attendance and extreme fluctuations in earnings.

We understand that facilities serving large numbers of individuals with these types of handicapping conditions have administrative difficulties complying with Department of Labor regulations and are justifiably seeking to simplify the certification process, a need also recognized by the General Accounting Office.

The bill we are addressing, H.R. 2676, is based on statutory language recommended by the GAO. The bill's aim is to simplify the certification process by deleting specific provisions of section 14(c) of the Fair Labor Standards Act.

The General Accounting Office's recommendation that a guaranteed wage minimum be established and documented for each worker would be left to the regulatory process. This lack of specificity in the statute is a matter of concern to the General Council of Workshops for the Blind.

The rationale for the proposed changes is cited in the 1981 GAO's study entitled "Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops." This report accurately stated that the 50-percent wage guarantee has not had its intended effect due to the utilization of special individual certificates or other special exemption certificates.

Only those individuals whose wages, based on individual productivity, would seldom fall below the Federal subminimum are employed under certificates requiring the 50-percent wage guarantee. The Department of Labor issued exemptions for 86 percent of the workshop population in fiscal year 1984.

Based on these findings, the CAO recommended the elimination of the 50-percent floor rate. However, it also stated that, while the commensurate wage provision gives reasonable assurance that handicapped workers in sheltered workshops are paid fairly, the workshops should be required, in our opinion, by the Department of Labor to establish and document a guaranteed wage minimum for each handicapped worker.

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GAO specifically recommended that the Secretary of Labor adopt procedures which assure that each worker's guaranteed wage is determined on the basis of individual productivity, such as a worker's average productivity for a specified period of time, for example, the most recent 90-day period.

The council agrees that the 50-percent floor rate is ineffective. In sheltered workshops unable or unwilling to pay wage subsidy, the 50-percent minimum, forces greater utilization of the special individual certificate rate for less than 50 percent but not less than 25 percent of minimum wage; second, it encourages limited work hours so as not to exceed earnings limitations for clients in work activity centers; and third, curtails employment opportunities.

The council believes the 50-percent floor rate serves no purpose and does not object to its elimination. However, it also believes that the establishment of a documented, guaranteed wage minimum based on demonstrated production capabilities for each handicapped worker is fair, provides necessary protection to each worker, and such requirement should be contained in the act as well as in the regulations.

The guaranteed wage minimum should take into account the worker's guaranteed rate of pay when the 50-percent minimum is eliminated, to assure the individual's pay is not cut. Many workers are guaranteed minimum wages that not only exceed the 50-percent floor rate, but also meet or exceed the statutory minimum wage. These guarantees are based on demonstrated average productivity for a recent period. Workshop management and policymaking boards, which do not remain constant, could decide to discontinue the cost of wage subsidy, thus reducing wages for those individuals previously subsidized.

The council further believes a guaranteed wage minimum for each individual would encourage workshop management to continue to identify innovative ways to increase individual productivity while enhancing job satisfaction for individual workers.

H.R. 2676 would eliminate from the act the concept of work activity centers as special therapeutic work environments, physically separated from the more competitive work environments of regular sheltered workshops, where severely handicapped persons with inconsequential productive capabilities can be served. This concept, with its emphasis on therapy rather than production, is an appropriate setting for serving handicapped persons who qualify by their severe physical or mental limitations, including inadequate basic skills of daily living.

Workshops for the Blind have found this special setting often serves as a transitional step for advancement into higher levels of productivity and earnings. The council believes the concept of and provision for work activity centers should be contained in the act.

If it should be determined that integration of work activities clients with workers in the regular workshop program is ever in the best interest of certain handicapped persons, the council feels strongly that such integration should be permissive, not mandatory, and be so stated in the act.

Workshops for the Blind generally use the work activity centers as conceptualized, and most would maintain separate programs. Some, however, may not; and we are concerned that some multiple

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handicapped persons who need a special therapeutic and supportive environment would be less appropriately served.

The General Accounting Office observed that the trend of providing sheltered employment opportunities rather than therapeutic activities in work activity centers does not appear consistent with congressional intent. The report cited commingling of work activities centers clients and regular sheltered workshop program clients. They also noted a trend toward including more workers under the broad work activities center category.

Again, while we recognize differences in Workshops for the Blind and those serving other types of handicaps, we are not sure that a practice which represents a departure from a sound concept and Congress' intent is sufficient justification for eliminating the work activities center concept.

In summary, the General Council of Workshops for the Blind would like to see the language of this bill provide for work activity centers as separate programs with therapeutic activities as the purpose. If integration of work activities centers and regular sheltered workshop programs is deemed advisable, we would like the act to indicate that such integration is permissive, not mandatory.

The council supports the commensurate wage principle and the elimination of the 50-percent floor rate which is ineffective and does not assure a minimum standard of earnings.

The council would like to see the language of this bill require each workshop to establish and document a guaranteed wage minimum based on demonstrated production capabilities for each handicapped worker employed in a regular sheltered workshop program. We believe this provision is fair and provides necessary wage protection against conditions not under the worker's control. A grandfather provision should prohibit reduction of earnings for individuals covered by a guaranteed minimum wage at the time new rules become effective.

The council prefers to have these concerns provided for in H.R. 2676 to assure protection in the statutes. However, if the subcommittee should adopt the bill as it is presently written, we urge the subcommittee to recommend in its report language that the Secretary of Labor take those concerns under consideration when new regulations are proposed.

The General Council of Workshops for the Blind appreciates the opportunity to present this statement before the Subcommittee on Labor, and trusts that we have been helpful in the deliberation process of considering H.R. 2676.

This bill and others which would amend the statutory authority under which handicapped persons have an option of gainful employment and other supportive services in special sheltered environments deserves your careful consideration.

Thank you.

[The prepared statement of James W. Wells follows:]

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Prepared Statement of James W. Wells, President, General Council of Workshops for the Blind

INTRODUCTION

Mr. Chairman, members of the Subcommittee, my name is James W. Wells. I am president of the General Council of Workshops for the Blind. Members of the Council operate 104 rehabilitation facilities located throughout the United States, the District of Columbia, and Puerto Rico. These facilities provided special employment for 5,791 blind and multihandicapped blind persons in fiscal year 1984. Blindness, a sensory deprivation handicap which represents only 5% of the total handicapped population, is distinctly different from other physical handicaps in its effect on most facets of living. Blind persons have unique needs. Separate, identifiable services by specialized trained professionals have been found essential in meeting the rehabilitation needs of blind persons.

STATEMENT

The General Council of Workshops for the Blind, hereinafter referred to as the Council, recognizes that the vast majority of persons being served in sheltered workshops under Department of Labor minimum wage exemption certificates are mentally or developmentally disabled with a wide variety of handicapping conditions, including severe emotional and behavioral problems. In many cases, these behaviors cause irregular attendance and extreme fluctuation in earnings. We understand that facilities serving large numbers of individuals with these types of handicapping conditions have administrative difficulties complying with Labor regulations and are justifiably seeking to simplify the certification process, a need also recognized by the General Accounting Office.

The bill we are addressing, H.R. 2676, is based on statutory language recommended by the General Accounting Office. The bill's aim is to simplify the certification process by deleting specific provisions of Section 14(C) of the Fair Labor Standards Act. The General Accounting Office's recommendation that a guaranteed wage minimum be established and documented for each worker would be left to the regulatory process. This lack of specificity in the statute is a matter of concern to the Council.

H.R. 2676 seeks to amend Section 14(C) of the Fair Labor Standards Act in several ways. By revising subparagraph (1), the bill would continue to provide for the employment of handicapped workers at wages less than the statutory minimum wage, provided those wages are commensurate with those paid non-handicapped workers employed in the same vicinity for essentially the same type, quality, and quantity of work. It would eliminate the provision that a handicapped worker be paid not less than 50% of the statutory minimum wage; and by deleting subparagraphs (2) and (3) the bill would eliminate all exceptions to that provision by simply requiring that wages be related to the individual's productivity. Subparagraphs (2) and (3), to be deleted, provide for the employment of handicapped workers engaged in work which is incidental to training and evaluation programs; special individual rates below 50% for individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment within the regular sheltered workshop setting; and for employment of individuals at commensurate wages, without a guaranteed minimum, in work activities centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

The rationale for these proposed changes is cited in the 1981 General Accounting Office's study entitled "Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops." This report accurately stated that the 50% wage guarantee has not had its intended effect due to the utilization of special individual certificates or other special exemption certificates. Only those individuals whose wages, based on individual productivity, would seldom fall below the federal subminimum are employed under certificates requiring the 50% wage guarantee. The Department of Labor issued exemptions for 86% of the workshop population in fiscal year 1984. Based on these findings, the GAO recommended the elimination of the 50% floor rate; however, it also stated that while the commensurate wage provision gives reasonable assurance that handicapped workers in sheltered workshops are paid fairly, the workshops should be required by the Department of Labor to establish and document a guaranteed wage minimum for each handicapped worker. GAO specifically recommended that the Secretary of Labor adopt procedures which assure that each worker's guaranteed

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wage is determined on the basis of individual productivity, such as a worker's average productivity for a specified time period; e.g., the most recent 90-day period.

ELIMINATE 50 PERCENT FLOOR RATE—ESTABLISH INDIVIDUAL GUARANTEED MINIMUM WAGES

The Council agrees that the 50% floor rate is ineffective. In sheltered workshops unable or unwilling to pay wage subsidy, the 50% minimum (1) forces greater utilization of the special individual certificate rate for less than 50% but not less than 25% of minimum wage (2) encourages limited work hours so as not to exceed earning limitations for clients in work activities centers or (3) curtails employment opportunities. The Council believes the 50% floor rate serves no purpose and does not object to its elimination; however, it also believes that the establishment of a documented guaranteed wage minimum based on demonstrated production capabilities for each handicapped worker is fair, provides necessary protection to each worker, and such requirement should be contained in the Act as well as the regulations.

The guaranteed wage minimum should take into account the worker's guaranteed rate of pay when the 50% minimum is eliminated to assure the individual's pay is not cut. Many workers are guaranteed minimum wages that not only exceed the 50% floor rate, but also meet or exceed the statutory minimum wage. These guarantees are based on demonstrated average productivity for a recent period. Workshop management and policy-making boards, which do not remain constant, could decide to discontinue the cost of wage subsidy, thus reducing wages for those individuals previously subsidized.

The Council further believes a guaranteed wage minimum for each individual would encourage workshop management to continue to identify innovative ways to increase individual productivity while enhancing job satisfaction for individual workers.

MAINTAIN WORK ACTIVITIES CENTERS

H.R. 2676 would eliminate from the Act the concept of work activities centers as special therapeutic work environments, physically separate from the more competitive work environments, physically separate from the more competitive work environments of regular sheltered workshops, were severely handicapped persons with inconsequential productive capabilities can be served. This concept, with its emphasis on therapy rather than production, is an appropriate setting for serving handicapped persons who qualify by their severe physical or mental limitations including inadequate basic skills of daily living. Workshops for the blind have found this special setting often serves as a transitional step for advancement into higher levels of productivity and earnings. The Council believes the concept of and provision for work activities centers should be contained in the Act.

If it should be determined that integration of work activities clients with workers in the regular workshop program is ever in the best interest of certain handicapped persons, the Council feels strongly that such integration be permissive, not mandatory, and be so stated in the Act. Workshops for the blind generally use the work activities centers as conceptualized, and most would maintain separate programs. Some, however, may not, and we are concerned that some multiple handicapped persons who need a special therapeutic and supportive environment would be less appropriately served.

The General Accounting Office observed that the trend of providing sheltered employment opportunities rather than therapeutic activities in work activities centers does not appear consistent with congressional intent. The report cited commingling of work activities centers clients and regular sheltered workshop program workers. They also noted a trend towards including more workers under the board work activities centers category. Again, while we recognize differences in workshops for the blind and those serving other types of handicaps, we are not sure that a practice which represents a departure from a sound concept and Congress' intent is sufficient justification for eliminating the work activities centers concept.

SUMMARY

The General Council of Workshops for the Blind would like to see the language of this bill provide for work activities centers as separate programs with therapeutic activities as the purpose. If integration of work activities centers and regular sheltered workshop programs is deemed advisable, we would like the Act to indicate that such integration is permissive, not mandatory.

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The Council supports the commensurate wage principle and the elimination of the 50% floor rate which is ineffective and does not assure a minimum standard of earnings as was envisioned by Congress.

The Council would like to see the language of this bill require each workshop to establish and document a guaranteed wage minimum based on demonstrated production capabilities for each handicapped worker employed in a regular sheltered workshop program. We believe this provision is fair and provides necessary wage protection against conditions not under the worker's control. A "grandfather" provision should prohibit reduction of earnings for individuals covered by a guaranteed minimum wage at the time new rules become effective.

The Council prefers to have these concerns provided for in H.R. 2676 to assure protection in the statutes. However, if the Subcommittee should adopt the bill as it is presently written, we urge the Subcommittee to recommend in its report language that the Secretary of Labor take these concerns under consideration when new regulations are proposed.

CONCLUSION

The General Council of Workshops for the Blind appreciates the opportunity to present this statement before the Subcommittee on Labor and trusts that we have been helpful to the deliberation process of considering H.R. 2676. This bill and others which would amend the statutory authority under which handicapped persons have an option of gainful employment and other supportive services in special sheltered environments deserves your careful consideration and you are to be commended for inviting organizations such as ours to participate. If you wish additional information, please let me know.

Mr. MURPHY. Thank you very much, gentlemen. What is the average wage that is paid to your clients now, Mr. Gashel? Do you know?

Mr. GASHEL. You mean, in Workshops for the Blind?

Mr. MURPHY. Yes, in Workshops for the Blind. Do you know?

Mr. GASHEL. Oh, slightly above the minimum wage. I guess it would be about $3.70 an hour to $4 an hour, something like that, the average.

By the way, most of the blind people earn above the 50-percent minimum, and a lot of them above the minimum wage.

Mr. MURPHY. That's been my experience, that just about all of them are above one-half minimum, and many of them are at minimum.

Mr. GASHEL. Yes, sir. So the average comes out actually higher than the minimum wage.

Mr. MURPHY. So, really, you have no problem with this.

Mr. GASHEL. We have a lot of problem with it; yes. I mean, because the preponderance of people who fall below the minimum wage fall above the 50-percent minimum. So we have a great deal of problem with it.

Now, obviously, the people who are above minimum don't actually have a minimum wage guarantee either. The law doesn't say they have to be paid $3.35 an hour. So they could be victimized by this, too.

Mr. MURPHY. Mr. Petri.

Mr. PETRI. Thank you. We have to vote in a couple of minutes. So I'll be very brief.

I just want to, first of all, thank you for your testimony and your specific and, I think, overall constructive recommendations for either the bill or for a regulation implementing it.

Concerning one of the recommendations, I did have a question. That was the idea of having some sort of individual certificate, a guarantee, as to wage rates to be paid each worker. If an individ-

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ual's productivity fluctuates very widely, how is that going to be done administratively? Would it be on some average over a period of months, or would you have a fudge factor in it? What do you envisage? You could see that some individuals are there every day, and they perform on a regular basis, and it would be simple to certify. Others fluctuate a great deal, and if you had a certificate period of this week, they might be doing very, very well. If you had it next week, they might be doing very low. In either case, because it fluctuates, the shoe is never going to fit exactly what's going on. Do you have a recommendation on that?

Mr. WELLS. I'd like to respond to that in this way, Mr. Petri. In my statement I mentioned a 90-day period as a possible examination period. Under the present rules we operate, we are required to establish guaranteed minimum wages for those persons who are on individual certificates and those persons who are on what we call regular sheltered workshop certificates at some level above 50 percent.

We would presume that some type of an approach would be taken to deal with those persons in work activity centers, for example, that presently do not receive those sort of guarantees. It's done over a period of time that we believe does represent what you might normally expect the individual—the level he might be expected to perform at during that time.

Mr. MURPHY. OK. Thank you very much, gentlemen.

Mr. Shaffer, you have your option, making it in about 2 minutes or waiting a half an hour, 40 minutes, until we come back to do your testimony.

I'm sorry, but we've got two votes coming up, rather important. They'll be back to back.

You may proceed.

STATEMENT OF MICHAEL SHAFFER, PRESIDENT, S&H PRODUCTS, SIDNEY, OH

Mr. SHAFFER. I would like to add, along with my written testimony, a copy of the petition for review that we filed with the Department of Labor claiming some very severe problems that we were having in following the regulations. Of course, the biggest problem is the separation of work areas at S&H Products.

We are a very small facility, unlike a lot of other facilities. The problems of separation creates even a more undue hardship on us due to our limited facility and lack of floor space and the additional supervision that it requires.

We're not—I'm not here to ask for a cut in wages and eliminating the guaranteed 50-percent minimum. What I am looking for is that we pay clients fairly for the work they do; no more, no less. You know, where does the subsidy of wages come from when we have to subsidize clients at 50 percent? Where does it come from? We have to increase our labor rates. So when our labor rates increase, our customer prices increase; and when our customer prices increase, now we're now charging them for more than what they can produce within their own shops.

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You know, our concern is we definitely do not want to cheat clients out of any pay, but we only want to pay them for the exact number of units produced and no more.

I agree with not allowing low functioning from affecting the productivity of the higher functioning as well, but this should be a rehabilitation decision and not a decision based on a minimum wage of 50-percent minimum. In fact, there's another problem using the 50-percent minimum wage.

It's not necessarily true that, just because you earn 50-percent minimum wage that you're high functioning. Take for an example a $6 labor rate that we use on one particular task at S&H. An individual who is functioning 28-percent efficiency will be earning 50-percent minimum wage; and I'm not convinced that at 28-percent efficiency, it's high functioning. So there's a lot of problems with these bills, you know.

With the limits of time, I would like to thank you.

[The prepared statement of Michael R. Shaffer follows:]

PREPARED STATEMENT OF MICHAEL R. SHAFFER, DIRECTOR, S&H PRODUCTS, SIDNEY, OH

Mr. Chairman, my name is Michael R. Shaffer and I am the Workshop Director of S&H Products, a sheltered workshop located in Sidney, OH, and under contract with the Shelby County Board of Mental Retardation and Developmental Disabilities to provide habilitation and vocational training to mentally and physically handicapped individuals in Shelby County, Ohio. As the Workshop Director of this facility, I know first hand the administrative problems encountered with current regulations under Section 14(c) of the Fair Labor Standards Act in providing vocational training and employment opportunities to our 72 handicapped clients.

S&H Products was incorporated in 1977 and since that time, we have prided ourselves with providing the most beneficial and individualized vocational training possible for our clients. We were issued, through the U.S. Department of Labor (DOL), a Work Activities Certificate which permitted us to pay clients a commensurate wage based on the prevailing wage of a non-handicapped worker in the same geographical area performing essentially the same type, quantity and quality of work. This system worked very well in guaranteeing our clients a fair and equitable wage for their productivity and allowed us the flexibility necessary to provide vocational training skills on an individual basis.

However, this all changed on July 31, 1983, when the DOL requested that S&H Products cover those clients who earn more than an average hourly wage of fifty per cent (50%) the applicable minimum wage ($1.675) on another type of certificate. At that time, we applied for and received Individual Certificates in addition to our Work Activities Certificate. On July 31, 1984, S&H Products was informed by DOL that the renewal of these certificates was being denied since the number of Individual Certificates exceeded ten per cent (10%) of the total number of clients, and requested that S&H Products establish a Regular Program.

Consequently, I appealed this request to the Administrator of DOL claiming that the ten per cent rule was an erroneous interpretation of the regulations regarding the granting of Individual Certificates in sheltered workshops since it does not take into account the needs and circumstances of the particular workshop involved. In essence, we were attempting to eliminate the many administrative problems which would exist, as well as the curtailment of employment opportunities for our clients and the elimination of our flexibility to provide employment and vocational training on an individualized basis. After review of our petition, DOL's Administrator ruled in favor of DOL and issued a deadline of September 6, 1985, for S&H Products to establish a Regular Program in addition to its Work Activities program.

It is because of this disruption in our operations at S&H Products that I am here today to explain to you the many problems that current regulations create for sheltered workshops. To begin with, I would like to bring to your attention the use of various types of certificates available or required for sheltered workshops to use when employing the handicapped which creates an extreme administrative burden.

The Work Activities Certificate requires that clients are paid a commensurate wage based on their actual productivity without any guaranteed minimum pay. The

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Individual Certificate guarantees clients an average hourly wage of not less than twenty-five per cent (25%) the applicable minimum wage, while the Regular Program Certificate guarantees clients an average hourly wage of not less than fifty per cent (50%) the applicable minimum wage. To compute a payroll for our 72 clients at S&H Products under the above conditions, an administrative nightmare exists. Not only do we need to determine whether a client qualifies for a guaranteed minimum hourly wage, but we then need to determine whether the client qualifies for an hourly wage of not less than twenty-five per cent or fifty per cent the applicable minimum wage.

To add to this burden, current regulations require separate records to be maintained for those clients covered under the Work Activities Certificate, separate records for those clients covered under the Individual Certificate and separate records for those clients covered under a Regular Program Certificate.

The requirement under an Individual Certificate and the Regular Program Certificate to guarantee clients a minimum hourly rate of pay is totally unfair to sheltered workshops. Since sheltered workshops are required to base client pay on the prevailing wage paid to a non-handicapped worker in the same geographical area for the same type, quantity and quality of work, then sheltered workshops are actually paying a higher cost of labor than other local industries who employ non-handicapped workers since sheltered workshops must in addition to this, subsidize client pay when they fall below their guaranteed minimum rate of pay. Furthermore, when clients receive more pay than their actual production output, they obtain a false impression and expectation of their productive capabilities and earning capacity.

Some clients, who are guaranteed a minimum rate of pay, are not placed on particular job tasks in which their individual handicapping condition impairs their functioning level. Instead, these clients will remain on job tasks that they are more efficient on to eliminate the possibility of S&H Products incurring higher labor costs when subsidizing their wages. Therefore, these clients are not being deprived of any diversification in their vocational training.

Another problem existing with the variouis types of certificates is that clients covered under a Work Activities Certificate must be placed in a separate identifiable area from those clients covered under a Regular Program Certificate. This division creates an extreme hardship at S&H Products when considering our physical facility, the various types of production work performed, the number of supervisory staff available and, most importantly, the individualized needs of each client.

The physical facility housing S&H Products is very limited in production and warehouse space. Although by merely placing a line on the floor satisfies the requirement of providing separate areas, additional floor space is necessary to separate the Work Activity clients from the Regular Programs clients.

The customer demand at S&H Products for the various types of production worked performed fluctuates greatly, affecting the amount of production and warehouse space required for each job on a continuing basis. We are then forced to continually adjust the size of the separate areas in accordance with our production schedules. Also, several non-movable pieces of equipment are used in production. Clients located in the area with this equipment can be trained to use it, however, clients located in the other area are deprived of the opportunity to be trained on the equipment. Therefore curtailment of employment opportunities exist for those clients who are not located in the same area as the non-movable pieces of equipment. This is in direct contrast with the intent of Congress in 1966 to set forth regulations, short of curtailing employment opportunities, to provide for the employment of individuals whose earning or productive capacity is impaired by physical or mental deficiency (see 29 CFR Part 525.1).

Current regulations also require that separate supervision be provided for the separate areas. Prior to the establishment of the Regular Program at S&H Products, we were able to maintain a 12:1 client to supervisory ratio which is in accordance with State rules governing our program. However, the creation of the Regular Program at S & H Products has caused another extreme hardship since an additional supervisor is now needed to maintain the 12:1 ratio. The following example will show this.

Work activity only: 72 work activity clients divided by 12 work activity clients/supervisors equals 6 work activity supervisors needed.

Work activity and regular program: 52 work activity clients divided by 12 work activity clients/supervisors equals 4.33 (5) work activity supervisors needed; 20 regular program clients divided by 12 regular program clients/supervisors equals 1.67 (2) regular program supervisors needed.

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With a dual program at S & H Products, five supervisors are needed to supervise the Work Activity clients and two supervisors are needed to supervise the Regular Program clients which represents one additional supervisor needed to separate the two program areas. With budget cuts occurring on the Federal and State levels, the additional staff position places a drastic strain on our already limited operating funds.

The individualized needs of each client are also not considered when requiring sheltered workshops to provide separate areas. While some clients can produce at more than fifty per cent of the applicable minimum wage, they may have severe behavioral problems which not only affect the quantity and quality of their work, but the quantity and quality of work by other clients working in the same area. When the work of the other clients in the same area has been disrupted, we incur even higher labor costs when subsidizing their pay to a guaranteed minimum. Worse yet, there is no way to prevent this from occurring since our flexibility has been eliminated by the separation requirement.

On the other hand, some clients who cannot produce at more than fifty per cent the applicable minimum wage may benefit by working beside another client who is producing at a higher rate since the higher-producing clients will serve as role models. Again, the separation of areas eliminates the flexibility of S & H Products to provide the maximum benefit to each individual client.

The intent of these regulations to provide separate areas is merely an attempt to separate the higher functioning clients from the lower functioning clients. However, this is not being accomplished since the basis of separation under current regulations is based on fifty per cent the applicable minimum wage rather than the prevailing wage which is used to determine client wages. The following example will illustrate this problem: $6.00 prevailing wage times .28 efficiency (percent) equals $1.68 hourly earnings.

As you can see from this example, a client functioning at twenty-eight per cent efficiency on a job task with a $6.00 per hour prevailing wage rate is considered to be higher functioning since the client earns more than fifty per cent of the applicable minimum wage ($1.675). Therefore, the separation requirement under current regulations serves no useful purpose.

In summary, current regulations under Section 14(c) of the Fair Labor Standards Act must be revised to eliminate the extreme burden and hardships presently experienced by sheltered workshops and to eliminate the curtailment of employment opportunities to the handicapped. This can only be accomplished by a change in the law which would:

(1) Eliminate the separation of areas. This should be a decision for trained professionals in the rehabilitation field when taking into consideration the maximum benefit for each individual client.

(2) Eliminate the guaranteed minimum pay requirements and require that clients are paid fairly for their actual work produced. In essence, if a client is functioning at fifty per cent efficiency, then the client should be paid fifty per cent the prevailing wage—no more nor less.

(3) Eliminate the various certificates and require only one certificate for shelterd workshops to use when providing employment to the handicapped. In turn, the requirement of providing separate records and separate supervision would also be eliminated, as well as the administrative nightmare which currently exists today.

I would like to thank you for providing me the opportunity to share with you my concerns on this issue.

Mr. MURPHY. What do you pay your people now?

Mr. SHAFFER. Right now, some of our people are guaranteed no less than 50 percent on wage. All of our employees are paid a commensurate wage for the products they produce. In fact, some of them are even paid more than that.

Mr. MURPHY. Your highest wage, though, is $1.67 an hour?

Mr. SHAFFER. The highest wage—excuse me?

Mr. MURPHY. That's half the minimum wage. Your highest wage—you're saying you have some of your people at one-half minimum wage.

Mr. SHAFFER. Some of them earn that. Some of them earn much more than that.

Mr. MURPHY. They do?

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Mr. SHAFFER. Right. We have various prevailing wage rates that we use, in accordance with the skill level of a task, whether it's an unskilled bench assembly or a high skilled, you know, electrical assembly. There are various wage rates.

One prevailing wage rate that we use for a high skilled electrical assembly is $6 an hour, and our lowest prevailing wage rate that we use and base all of our contract pay on is $4.10 an hour. So at S&H Products, all clients are currently being paid the commensurate wage, at least, for the work that they're producing. In fact, some of them are earning more than that, which gives them false expectation of their earning productivity and capacity, and also creates a very unfair burden to S&H Products in competing with other local industries employing nonhandicapped employees.

Mr. MURPHY. Thank you.

Mr. Petri?

Mr. PETRI. No questions.

Mr. MURPHY. Thank you very, very much, Mr. Shaffer.

The hearing is adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

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National Industries for the Blind
524 Hamburg Turnpike, Wayne, New Jersey 07470 • (201) 595-9200

THOR W. KOLLE, JR.
Chairman
ABRAM CLAUDE, JR.
President
PETER K. DEEKS
Secretary-Treasurer
GEORGE J. MERTZ
Executive Vice President

October 17, 1985

The Honorable Austin J. Murphy
Chairman
Education and Labor
Subcommittee on Labor Standards
B346A Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Murphy:

The Education and Labor Subcommittee on Labor Standards held a hearing on H.R. 2676 on October 3, 1985. I respectfully request to have the enclosed written testimony submitted to the hearing record.

Thank you for your continued interest in issues affecting blind and handicapped citizens.

Sincerely,

George J. Mertz

George J. Mertz
President

GJM/bfs

Enclosure

SKILCRAFT

DEVELOPING INDUSTRIAL EMPLOYMENT FOR THE NATION'S BLIND CITIZENS
AN EQUAL EMPLOYMENT OPPORTUNITY — AFFIRMATIVE ACTION EMPLOYER

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STATEMENT FOR THE RECORD

OF

NATIONAL INDUSTRIES FOR THE BLIND

REGARDING

House Bill 2676; a proposed amendment to Section 14(c) of the Fair Labor Standards Act of 1938, as amended

SUBMITTED TO

The Education and Labor Subcommittee
on
Labor Standards

The Honorable Austin Murphy, Chairman

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INTRODUCTION

National Industries for the Blind (NIB) is pleased and honored to submit comments for the record regarding H. R. 2676, a bill to amend Section 14(c) of the Fair Labor Standards Act. NIB appreciates the interest of the Subcommittee, and particularly Austin J. Murphy, Chairman, and Thomas E. Petri, in seeking ways to improve the effectiveness of 14(c).

National Industries for the Blind is a private non-profit organization which has been designated since 1938 as the Central Non-Profit Agency (C.N.A.) for qualified workshops for the blind which are eligible to participate in the program of the Javits-Wagner-O'Day Act (P.L. 92-28). As such, NIB has been directly involved in assisting workshops with their employment and service programs, and management functions for 47 years. The NIB Certificate of Incorporation states that NIB exists (among other reasons) to assist blind persons in general and blind workers in particular.

NIB is, in some respects, an outgrowth of the workshops. In 1938, the workshops, and other interested parties, recognized the need for a specialized organization which could provide technical assistance and related services and also function as the designated central non-profit agency. NIB was incorporated in 1938 and a funding mechanism was established soon after by the workshops. This mechanism, agreed to by all workshops, represents a percentage of sales to the federal government as distributed by NIB.

NIB's primary function as the C.N.A. under P.L. 92-28 is to equitably allocate purchase orders for Federal government items among qualified workshops for the blind and assure that the products meet quality and delivery requirements. NIB is further responsible for ensuring that workshops meet the stringent qualifications for initial and continuing eligibility, including compliance with applicable Department of Labor rules and regulations. Technical assistance is provided for workshops in an extensive range of management, manufacturing, and rehabilitation areas. Orientation and training programs are provided for blind workers, workshop staff and management, and agency board members. Financial assistance is also available under limited circumstances.

At the present time, there are 83 NIB associated agencies which operate 104 workshop programs. These agencies are located in 36 states, the District of Columbia, and Puerto Rico. In Fiscal Year 1984, the NIB associated agencies provided direct labor employment for 5,442 blind and multihandicapped blind persons, including 623 severely disabled blind persons served in 26 Work

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Activities Centers. Many of the workshops are a part of a multiservice parent agency. In Fiscal Year 1984, these agencies provided a range of rehabilitation, social, educational, and related services for approximately 67,000 blind persons.

In Fiscal Year 1984, the average wage for all blind persons in direct labor (including Work Activities Centers) was $3.69 per hour. Blind indirect labor persons were paid an average wage of $5.94 per hour. Fringe benefits were provided for all blind workers which generally are comparable to industry.

The NIB associated workshops and their parent agencies have historically employed legally blind persons at all levels. There are blind persons employed in executive, management, professional, technical, supervisory, and support positions, a significant percentage of whom have worked in direct labor at some point in their lives and have received opportunities for advancement.

RESPONSE TO H.R. 2676

National Industries for the Blind commends the Subcommittee members and Congressman Petri for their interest in seeking improved administration of Section 14(c) of the Fair Labor Standards Act and yet preserving wage protection for disabled persons. NIB recognizes that the majority of persons served in all workshops are mentally, emotionally, or developmentally disabled with a high degree of severity. In many cases, the behavioral patterns associated with these disabilities result in irregular attendance and extreme fluctuations in productivity. We are further cognizant that the current requirements of Section 14(c) present administative difficulties for workshops which primarily serve persons with the above disabilities and they are justifiably seeking to amend and simplify the certification process under 14(c)

NIB does not object to a single certificate program as contained in H. R. 2676. The proposed amendment is based on a recommendation for statutory revision contained in the 1981 report of the General Accounting Office Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops (H.R.D. 81-99). However, we do believe the accompanying G.A.O. recommendation for regulatory revision (as follows) is of such significant importance that it should also be included in any statutory revision:

> "We recommend that the Secretary revise the Federal regulations to (1) require that each sheltered workshop establish and document a

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> guaranteed wage minimum for each handicapped worker and (2) establish procedures for workshops to use in documenting each worker's guaranteed wage minimum. Specifically, we recommend that the Secretary adopt procedures which assure that each worker's guaranteed wage is determined on the basis of individual productivity, such as a worker's average productivity for a specified time period." (H.R.D. 81-99, p. 28).

A statutory revision which includes both the G.A.O. statutory and regulatory requirements would accomplish the goals of simplifying the administrative process under 14(c) for the Department of Labor and the workshops as well as providing a degree of wage protection and stability for disabled persons served by workshops. A few years ago, National Industries for the Blind developed a "Model Wage Plan." This plan essentially recommends an individual guaranteed minimum wage for each disabled workshop employee based on that person's productivity in the preceeding 90 day period. This plan is included as Attachment "A" for the Subcommittee's information and consideration.

H.R. 2676 by revising Subparagraph (1) of 14(c) would continue the requirement for commensurate wages, but eliminate the requirement that wages be no less than 50% of the federal minimum wage. It is important to note that commensurate wages are presently required under 14(c). This means that each workshop must document the prevailing wage in the community (non-sheltered) for the same or similar work done with essentially the same method. As an example, if a prevailing wage is determined to be $4.00 per hour for a particular job, the commensurate wage for a disabled workshop worker who is 50% productive on that job is $2.00 per hour. If that worker is 75% productive, he or she can be paid no less than $3.00 per hour.

H.R. 2676 would require the continuation of this commensurate wage system, but does not offer any wage protection or guarantee for the disabled individual who is shifted to a new job on which productivity falls below 50% of the federal minimum wage, due to disability factors, learning curves, insufficient work station modification, or other elements beyond the control of the worker. An individual guaranteed minimum based on the previous quarter's average productivity would place management in a position to seek methods for controlling these factors.

H.R. 2676 eliminates Subparagraphs (2) and (3) of Section 14(c), programs related to evaluation and training, and work activities centers designed specifically for persons whose productivity (because of severity of disability) is inconsequential. NIB recognizes that in some cases, the time limits in evaluation and

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training programs and the physical separation requirement of work activities centers may be detrimental to the rehabilitation progress of a severely disabled person. We do believe, however, that these programs are of sufficient conceptual importance to warrant their recognition in any revision to 14(c).

Work Activities Centers, as presently defined, are established to provide a range of therapeutic activities, including paid work, for the most severely disabled person. The NIB associated workshops use these programs to provide employment and related services on an individual basis for severely disabled blind persons who previously have been denied access to these services primarily due to the severity of their disabilities. Attachment "B" is a profile of persons served in the Work Activities Center of just one NIB associated agency, the Royal Maid Association for the Blind. The Work Activities Centers in NIB associated workshops are generally used to provide intensive, individual support services so that these most severely disabled blind persons may qualify for higher level employment and therefore receive a promotion. In Fiscal Year 1984, a significant number of severely disabled blind persons were promoted from a Work Activities Center to a regular workshop program in recognition of their individual progress and increased productive abilities.

RECOMMENDATIONS RELATED TO POSSIBLE 14(c) REVISION

NIB recommends that revision to Section 14(c):

1- simplify the certification process by allowing for the issuance of a single certificate exempting bonafide non-profit workshops from federal minimum wage requirements.

2- include a requirement that a guaranteed minimum wage be established for each covered disabled person based upon that individual's average productivity over a sufficient and predetermined time period.

3- continue to recognize the conceptual worth of evaluation, training, and work activities programs, without requirement for either inclusion with, or exclusion from, regular workshop programs. We recommend that revised legislation clearly state that the integration or separation of these programs is permissive.

4- continue to require that wages be commensurate with those paid in industry in the vicinity for work which is similar in quantity, quality, type, and method.

RECOMMENDATION FOR REVISED STATUTORY LANGUAGE

NIB is pleased to submit for the Committee's consideration the following language. We believe that it accomplishes the basic

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goal of H.R. 2676: simplification of the certification process, provision of a wage guarantee to protect disabled persons, and also recognition of sound conceptual issues without placing undue burden on workshop management or Department of Labor compliance personnel.

"The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation , provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity, is impaired by age, physical and mental disability, or injury. Under such certificates, individuals shall be paid wages which:

1. may be lower than the minimum wage applicable under Section 6.

2. are commensurate with those paid to non-disabled workers employed in industry in the vicinity in which the individuals covered by the certificate are employed for essentially the same type, quality, quantity, and methods of work, and

3. are based on the individual's average earnings over the immediately preceeding quarter or actual earnings, whichever is higher.

Nothing in this section shall be intended as either mandating or prohibiting either the integration or separation of departments and programs specifically designed to enhance individual progress such as evaluation, training, or work activities programs".

SUMMARY

NIB expresses its gratitude to the Subcommittee for this opportunity to submit written comments regarding possible revision to Section 14(c) of the Fair Labor Standards Act. NIB is in full agreement that the present administrative system for minimum wage exceptions places undue burden on both workshop and Department of Labor compliance staff. NIB has concretely shown its support of improved compliance visits to workshops by training Department of Labor compliance staff in methods of time study. Simplification of the administrative process should enable Department of Labor staff to increase on-site visits to workshops.

However, we also believe that any revision to the system should consider the efficacy of that revision to the blind or disabled worker as primary. We strongly urge the inclusion of a guaranteed individual minimum wage in statutory revision.

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The statutory language we suggest above modifies the G.A.O. recommendations to base this guarantee on previous "earnings" rather than "productivity". This will provide a more stable level of actual wages for a worker who is shifted between jobs with significantly different prevailing wage rate.

We further believe that a program which is sound conceptually should not be abandoned simply because practice has deviated from that concept. We therefore urge that statutory revision continue to specifically recognize the concepts of evaluation, training, and Work Activities Center programs.

Attachment A - "Model Wage Plan"
Attachment B - "Profile"

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Attachment A

National Industries for the Blind
524 Hamburg Turnpike, Wayne, New Jersey 07470 • (201) 595-9200

THOR W. KOLLE, JR.
Chairman
ABRAM CLAUDE, JR.
President
PETER K. DEEKS
Secretary-Treasurer
GEORGE J. MERTZ
Executive Vice President

April 5, 1983

TO: ALL NIB-ASSOCIATED INDUSTRIES

SUBJECT: Proposed Model Wage Plan

In the April/May 1982 issue of Opportunity, the NIB Wage and Compliance Department announced its plans to develop a Model Wage Plan for workshops for the blind. Over the past months many members of NIB's staff, including industrial engineers, rehabilitation personnel, and experts in Federal Regulations, have worked on this proposed Model Wage Plan for workshops. Because wage requirements are complicated and yet critically important to our workers, we reviewed this plan extensively before submitting it to you for review and consideration.

NIB's purpose is to provide your workshop with a model from which you can develop a formalized written wage plan, if you do not already have one. Of course, you will need to review and modify it to suit your individual shop's needs. We have been informed that most cases of Department of Labor wage violations occur due to the lack of specific knowledge and proficiency on the part of workshops. This Model Wage Plan should help you, when followed thoroughly, to identify potential problem areas. It also provides useful information on some of your wage responsibilities which we realize are complex and difficult to administer fully.

I know we all share a concern that fair and commensurate wage payments to your workers are applied and that you will review this Model Wage Plan and adopt it to suit your individual workshop's needs. As the task of setting commensurate wage rates is often difficult, especially to those shops that lack full technical staff, NIB will be offering as much assistance as possible to the workshops.

After your staff reviews this Model Wage Plan, please let NIB's Wage and Compliance Department know your comments. We look forward to working with you on developing the best possible wage plan for your individual workshop.

Sincerely,

George J. Mertz

George J. Mertz
Executive Vice President

GJM:gmo

Enclosure

SKILCRAFT

DEVELOPING INDUSTRIAL EMPLOYMENT FOR THE NATION'S BLIND CITIZENS
AN EQUAL EMPLOYMENT OPPORTUNITY — AFFIRMATIVE ACTION EMPLOYER

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SUGGESTED MODEL WAGE PLAN FOR WORKSHOPS FOR THE BLIND

I. PURPOSE

The primary purpose of the Wage Plan is to assure that the workers receiving an employment service in the workshop are fairly and equitably compensated for their services in a manner which matches or exceeds the requirements of the Fair Labor Standards Act as amended.

II. GOVERNING PRINCIPLES

In order to assure that proper wages are paid to the persons receiving an employment service, the following principles have been adopted by the workshop:

A. Wage payments are fair and equitable in proportion to the person's ability to earn with the maximum amount of support service provided.

B. Wage rates are consistent among comparable skill-required occupations within the workshop/agency.

C. Periodic reviews and adjustments are made to insure that wage rates reflect actual local labor market conditions and that production rates reflect the approved method used.

D. Differences in individual capability and proficiency are recognized.

E. All personnel (management, supervisory staff and direct and indirect labor force) are made aware of the workshop's wage payment plan in a manner consistent with their communication needs.

F. Procedures to resolve any questions or problems related to this Wage Plan are installed.

G. All workers will be advised of the production standards for their jobs.

H. The workshop will continue to look into ways to increase the services and fringe benefits provided to the workers covered by this plan.

I. A worker committee is established to meet with management to discuss the administration of the Wage Plan.

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III. POLICY

The following is adopted as workshop policy:

A. COMMITMENT: Management and staff are committed to the principle of each worker getting fair and equitable compensation for his/her efforts:

1. MANAGEMENT - Develop policies to ensure the success of the commitment.

2. WAGE ADMINISTRATOR - Ensure successful day-to-day operation of the Wage Plan.

3. WAGE COMMITTEE - (Consisting of the Production Manager, the Controller and administered by the Time Study Analyst) Acts as an advisor to the Time Study Analyst.

4. SUPERVISION - Ensure that the plan is working and responsive controls are implemented. The Supervisor has working knowledge of the plan, is familiar with all production methods and is able to answer questions or knows who can answer questions for his area.

5. RECORDS PERSONNEL - Maintain accurate audited and standardized records.

6. MATERIAL CONTROL PERSONNEL - Continuous supply of raw materials.

7. QUALITY CONTROL PERSONNEL - Maintain required quality standards.

8. PRODUCTION CONTROL PERSONNEL - Provide accurate production counts and feedback.

9. ENGINEERING PERSONNEL - Develop standardized methods with description.

10. EQUIPMENT MAINTENANCE PERSONNEL - Provide prompt repairs and adjustments to reduce the downtime to a minimum.

11. ACCOUNTING PERSONNEL - Will maintain accurate records to ensure proper wage payment.

12. REHABILITATION PERSONNEL - Provide meaningful and adequate orientation and training.

B. LAYOFFS: There are no layoffs of blind direct or indirect labor workers due to increased production rates resulting from improved manufacturing methods or due to any other

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provisions of this plan. If layoffs should occur for other unforeseen reasons and when layoffs do occur, then sighted direct and indirect persons will be laid off first whenever possible.

C. WORKER'S EARNINGS: A worker's earnings will not be reduced as a result of improved manufacturing methods or any other provisions of this plan except as provided in the section "Guaranteed Minimum Earning Rate" (see Page 7). The workshop will attempt to provide all workers covered by this plan with every opportunity to increase their earnings.

D. RESOURCES REQUIRED: In order to assure the success of this plan, the agency and workshop management is committed to provide the necessary resources in the following areas:

1. Development and maintenance of engineered methods, production standards and commensurate wage rates.

2. Equipment maintenance.

3. Quality and safety control procedures.

4. Accounting procedures and controls.

5. Rehabilitation support services.

6. Production and material control.

E. PIECE RATE COVERAGE: Piece rates will be developed and implemented to the greatest extent practical.

F. METHOD IMPROVEMENT AWARDS: All workers are encouraged to offer suggestions for improvements in production methods. A worker whose suggestion is accepted and implemented will be rewarded with an Improvement Award as determined by the workshop management. It is recognized that once a method has been improved, the operation must be retime studied to establish a new production standard. By retime studying changes in methods and maintaining correct production rates, the workshop guarantees an equal opportunity for maximum earnings to all workers.

IV. WAGE PLAN

The Wage Plan adopted by the workshop is divided into five separate parts:

A. Gross pay.

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B. Components of gross pay.

C. Guaranteed minimum earnings rate.

D. Wage rates.

E. Production rates.

A. GROSS PAY.

The gross pay of a worker consists of one or more of the following six components:

1. Regular earnings.
2. Make-up pay - to meet DOL Certificated Rate.
3. Subsidy - if provided by workshop.
4. Overtime earnings.
5. Shift differential premium.
6. Holiday/Vacation/Sick pay.

B. COMPONENTS OF GROSS PAY.

1. REGULAR EARNINGS.

Regular earnings are the earnings of a worker based on his/her productivity. There are two methods of compensating a worker for his/her productivity: Piece Rate and Hourly Rate of pay.

a. PIECE RATES: This method is used wherever possible to ensure that the worker is paid on the basis of actual production. The piece rate is calculated by dividing the Commensurate Wage Rate by the Standard Production Rate. For example:

> Commensurate Wage Rate $4.00 divided by Standard Production Rate of 100 widgets per hour equals Piece Rate of $.04 per piece.

In order to assure that the piece rate system is fair and equitable, the following guidelines are adopted:

> VERIFIABLE RATES: Piece rates are based on verifiable production standards and commensurate wage rates. Records are maintained on file to substantiate how they are determined.

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100 PERCENT EARNINGS: The regular earnings of a worker on piece rate are based on 100 percent of the per piece value for each acceptable piece produced within the framework of acceptable quality standards. There is no limit to the maximum amount the worker can earn under this system. For example:

Production Standard: 100 Widgets per hour.

Wage Rate: $4.00 per hour.

Piece Rate: $.04 per widget.

Day 1 - 8 hour day - 840 widgets produced.

Pay is based on 840 widgets x $.04 = $33.60

Total pay for Day 1: $33.60

PROMPT PERFORMANCE NOTIFICATION: Production Reports (production units manufactured and percentage of standards) are made available at least weekly to all workers upon their individual request.

GROUP PIECE RATE POLICY: Group piece rates are discouraged whenever possible since they may not be "fair" to individual members of the group.

b. HOURLY RATE OF PAY: This method is only used when engineered standards are not generally available. The workers are paid using the commensurate wage rate as a b: In no case are the hourly worker's earnings calculated on less than the commensurate wage rate for a job.

Such earnings are computed on the actual production performed by the worker divided by the "estimated" production standard per hour for that job times the commensurate wage rate for the same or similar types of work in competitive industry.

Workers Actual Production Per Hour divided by "Estimated" Production Standard Per Hour multiplied by Commensurate Wage equals Regular Hourly Earnings.

EXAMPLE 1: Commensurate wage rate for Job A is $4.75 per hour. Although legally a person can be paid the statutory minimum wage, this is contrary to the goals and philosophy of a satisfactory wage

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plan and will not occur at this facility. If a person produces 100 percent of production standard, he will be paid $4.75 per hour.

EXAMPLE 2: If a person produces 75 percent of production standards and the commensurate wage rate is $4.75 per hour, the worker will receive a least his/her full 75 percent of the commensurate wage regardless of the minimum wage. In this example, the worker would be paid at least $3.56 per hour as regular earnings. For example:

.75 x $4.75 = $3.56

2. MAKE-UP PAY.

If a worker's regular earnings based on his/her productivity are less than the DOL Certificate Rate, the workshop is required by law to make up the difference.

3. SUBSIDY.

If a worker's total earnings (regular earnings and make-up pay, if any) are less than the agency-designated "shop floor rate" (which is higher than the DOL Certificate Rate), then the workshop will provide the difference as a subsidy.

4. OVERTIME.

Time and one-half is paid for overtime after forty hours per week and where applicable after eight hours per day per requirements of Walsh-Healy Act or other applicable laws. If the worker is required to work on a holiday, he/she will receive his/her holiday pay plus time and one-half for any additional hours worked.

5. SHIFT DIFFERENTIAL.

Workers on second and third shifts receive premium pay for each hour worked in addition to their regular pay. The following percents or rates are used at this facility:

Second Shift _____ Per Hour.

Third Shift _____ Per Hour.

6. HOLIDAY, VACATION AND SICK PAY.

Workers will be paid for holiday, vacation and sick pay according to the policies of the agency. Persons working

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on either hourly rates of pay or piece rate will receive their guaranteed minimum earning rate or their actual average earnings rate whichever is higher as shown in "C" below.

C. GUARANTEED MINIMUM EARNINGS RATE.

A guaranteed minimum earnings rate is established for each worker based on total earnings (regular earnings plus make-up pay, if any, and excluding subsidies) during the previous quarter. It is calculated by averaging the worker's total earnings at his/her main occupation. This guaranteed minimum earning rate or his/her average earnings during the most recent pay period, whichever is higher, is used for calculating his/her minimum hourly pay whenever the actual earnings may be impaired due to such causes as:

Machine downtime is over fifteen minutes.

Lack of work for short intervals.

Learning a new method or operation.

Work other than main occupation.

Retime study or methods changes awaiting retime study.

Nonpiece-rated operations.

Rehabilitation-related activities, i.e. mobility, counseling sessions, etc.

Individual is unable to maintain productivity due to a change in condition of disability/handicap (the supervisor will indicate the proper reason on the worker's time card).

1. The worker is paid actual earnings or his/her guaranteed minimum hourly earnings rate whichever is higher.

2. The worker is paid his/her guaranteed minimum earnings rate or his/her actual present earnings for the most recent pay period whichever is higher in case of authorized vacations, sick time and holidays (see Example #2).

3. If the worker's average earnings decrease in a quarter, this would be proper cause to reduce his/her guaranteed minimum earnings rate for the next quarter. A downward adjustment in this rate may not, however, be more than five percent per quarter as shown in the following Example #1:

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EXAMPLE #1:

	QUARTERS				
	1st	2nd	3rd	4th	1st
RANGE OF TOTAL EARNINGS (ACTUAL) PER HOUR	$3.75 to $4.25	$3.00 to $4.00	$3.75 to $4.75	$3.50 to $4.50	
AVERAGE EARNINGS (ACTUAL) PER HOUR	$4.00	$3.50	$4.25	$4.00	
GUARANTEED MINIMUM EARNINGS RATE	---	$4.00	$3.80*	$4.25	$4.04*

* Maximum reduction of five percent from previous rate.

EXAMPLE #2: Vacation/Sick Time/Holiday Pay

	February 7 - 11
Range of Total Earnings Actual	$4.50 to $4.75
Actual Average Earnings for the Week (35 hours with gross pay of $161.87)	$4.62
Guaranteed Minimum Earnings Rate	$4.04
If a worker was sick on February 15, he/she would be paid his/her guaranteed minimum earnings rate ($4.04) or his/her Actual average earnings ($4.62) whichever is higher	$4.62

D. WAGE RATES.

1. COMMENSURATE WAGE RATE - Commensurate wage rates are the same wage rates as are being paid in surrounding industry in the area for the same or similar operations being done in the workshop. Such local industry wage rates are also termed "prevailing" wage rates. These wage rates are based on annual surveys of industry doing similar operations using people experienced in their job. In order to maintain a consistency of commensurate wage rates among comparable occupations, a "Wage Classification Schedule" (see Appendix "A") is maintained.

2. COMMENSURATE WAGE RATES ABOVE THE MINIMUM WAGE - The commensurate wage rates must be derived by Federal Law from industry surveys, Department of Labor, State

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Employment Service, etc., for similar work in the area. This workshop has no arbitrary policy of using Federally-mandated minimum wage rate as rate of pay to avoid payment above the minimum wage.

3. PROMOTION - All workers are encouraged to improve their upward mobility and basic skill level for promotion to higher base wage rate occupations as shown in Appendix "B".

E. PRODUCTION RATE STANDARDS.

1. PRODUCTION RATES (STANDARDS) - Standards are established and maintained by _____. They represent the production rate that is expected under normal conditions from an average nonhandicapped worker who is motivated and experienced in the operation; working at a pace, he/she can maintain all day without undue fatigue using the method designed for blind persons. This production rate (standard) is termed 100 percent efficient and is used for calculating piece rates and productivity.

   Blind and/or handicapped persons may be used for the purpose of establishing such standard as long as they are considered to be nonhandicapped for the particular operation being studied.

2. COVERAGE - Standards are established for every feasible direct and indirect operation and are posted to enable all workers to be aware of the production expected on operations. In order to give as many workers as possible an opportunity for increased earnings, every effort is made to furnish standards for every job.

3. TECHNIQUES - Standards are established using acceptable techniques of Stop Watch Time Study, predetermined time standards such as Methods-Time-Measurement (MTM), work sampling, engineered production records, etc. Sometimes standards are obtained from outside industry, other workshops or NIB. These are only used after careful study to ensure that the method of operation is exactly the same; or the method or production rate is adjusted to reflect any and all differences.

   All work measurement is performed by fully-qualified, certificated analysts who practice the technique and are requalified at periodic intervals.

   a. TIME STUDY - This is a universally-accepted technique for establishing standards. A copy of the time study form used by the workshop is attached (see Appendix "C").

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b. LEVELING (PERFORMANCE RATE) - The time actually observed by an analyst during a study is adjusted to that of "standard" (100 percent efficiency) by the technique of "Leveling." The analysts are qualified to practice leveling and repractice the technique at least every six months or at the start of a new set of time studies. A copy of the leveling form "Rating the Performance" is attached (see Appendix "D").

c. ALLOWANCES - Personal, fatigue and delay allowances are added to the "leveled" time to make provisions for the worker's personal needs, unusual conditions, fatigue and interruptions. These allowances reflect the variety of working conditions in the plant. The minimum allowance is 15 percent. However, there is no maximum percent. An allowance derivation sheet is attached (see Appendix "E").

d. REVIEW - The final production rate standards are reviewed and tested by the supervisor and worker prior to installation. While a production rate is not "negotiable", the supervisor and/or worker may request a restudy if there is any question. Time studies are kept on file until revised and are available for review (all time studies are kept for a period of at least two years for Department of Labor purposes).

4. SINGLE STANDARD PER OPERATION - There is only one standard for each operation, and it applies to every individual working on that operation. If the method is changed, a new standard is established for that method, and the new method and standard is communicated to the worker and supervisor.

5 NONHANDICAPPED STANDARDS - All standards are based on nonhandicapped workers using the method designed for blind persons. Sometimes blind or handicapped persons may be used for time studies, if based on their performance, they are considered to be "nonhandicapped" for that particular operation (can produce in the range of nonhandicapped workers).

6. IMPROVEMENTS - The supervisors and workers are encouraged by management to offer suggestions for improvements.

7. STANDARDS MAINTENANCE - Fair and accurate standards assure workers of an equal opportunity to increase earnings. Therefore, standards are reviewed on a regular schedule, or "at least annually."

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a. Deliberate (clear-cut) methods changes are restudied immediately.

b. "Creeping" (gradual) refinement are restudied at least once every three years.

c. Demonstrated errors in standards are restudied immediately.

8. MACHINE-CONTROLLED OPERATIONS - On the machine-controlled operations, there is less opportunity for increased earning since the time during which the machine is in operation may be out of the control of the operator. In order to provide workers an equal opportunity for increasing earnings, the worker's actual productivity is adjusted to account for the proportion of the machine-controlled time. The attached "Machine Time Bonus" chart (see Appendix "F") is used to derive the factor which is used for adjusting the actual productivity. For example:

ELEMENT	TIME	PRODUCTIVITY
Load hopper and start	30 seconds	110
Machine time	30 seconds	100
Total job	60 seconds	105

Factor from Appendix "F" = 1.05

Adjusted productivity - 105 x 1.05 = 110

V. REVIEWS

There is a formal written review of each worker on piece rate twice per year in order to reflect his/her current production performance. Each worker on hourly pay has a formal written review four times per year for the same purpose.

The review also includes consideration of:

A. PERFORMANCE RECORDS - Records of the hours worked, production records of what was produced and the individual's daily performance summary.

These records are maintained on a continuing basis. An example of the Daily Performance Summary is attached (see Appendix "G").

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The review includes the following, if necessary:

1. New base wage rate determination.

2. New production standard calculation.

3. New piece rate calculation.

B. CERTIFICATES - Records are maintained of any special Department of Labor Certificated programs the individual participates in and the time he/she has been in each program. Each certificated worker is informed in writing by management of his/her benefits under the subminimum wage law (DOL Regulations 525) and which certificate rate applies to him/her (see Appendix "H").

C. DOL CERTIFICATES - The workshop has on file a copy of the DOL's Regulations which are available for review by the workers at any reasonable time.

VI. AUDIT

A system audit is performed by the Accounting Department every six months. Randomly-selected individual paychecks are traced back through the payroll system. Standards, time studies, wage rates, production records and time cards are also reviewed at this time to verify that everything is being done correctly and that the worker is being fairly and equitably paid in accordance with this plan and a record is kept of the records which have been audited.

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SAMPLE WAGE CLASSIFICATION SCHEDULE

Class & Grade		Plastics	Broom Assembly	Mop Assembly	Stamping	Other
I	A	Extrusion		Hayssen/set-up	Stamp/set-up	
	B		Stuffer		Stamping Operator Spotwelder	
II	A	Floor Work/Relief	Stitcher	Spring winder Sponge Slicer		Warehouse
	B	Mold & Bag Semi-auto molding		Screwdriver Pack/sticher		Warehouse
III	A	Molder	Material Handler Flagger	Press Hotmelt Stripper Material Handler Glue Plater		Linewinder
	B		Bagger Sealer Assembler Handle to Cap Angle Cutter	Assembler Sealer Riveter Hayssen Feeder Hotmelt Feeder Glue line Feeder		Shrinkwrap

SAMPLE

SAMPLE

SAMPLE BASE WAGE RATE SCHEDULE

Class I	A	$4.75
	B	$4.50
Class II	A	$4.10
	B	$3.90
Class III	A	$3.60
	B	$3.40

OPTIONAL ADDITIONS/VARIATIONS:

WAGE CLASSIFICATION SCHEDULE

TEXTILES	GRADE
Felling & all other sewing + 2, 3 & 4	1
Binding & Hemming + 3 & 4	2
Side seam & Overlock + 4	3
Bartack	4

SAMPLE

WAGE RATE SCHEDULE

TEXTILE GRADE	BASE WAGE RATE
1	4.75
2	4.50
3	4.10
4	3.60

The wage rates shown are for purposes of this example only.

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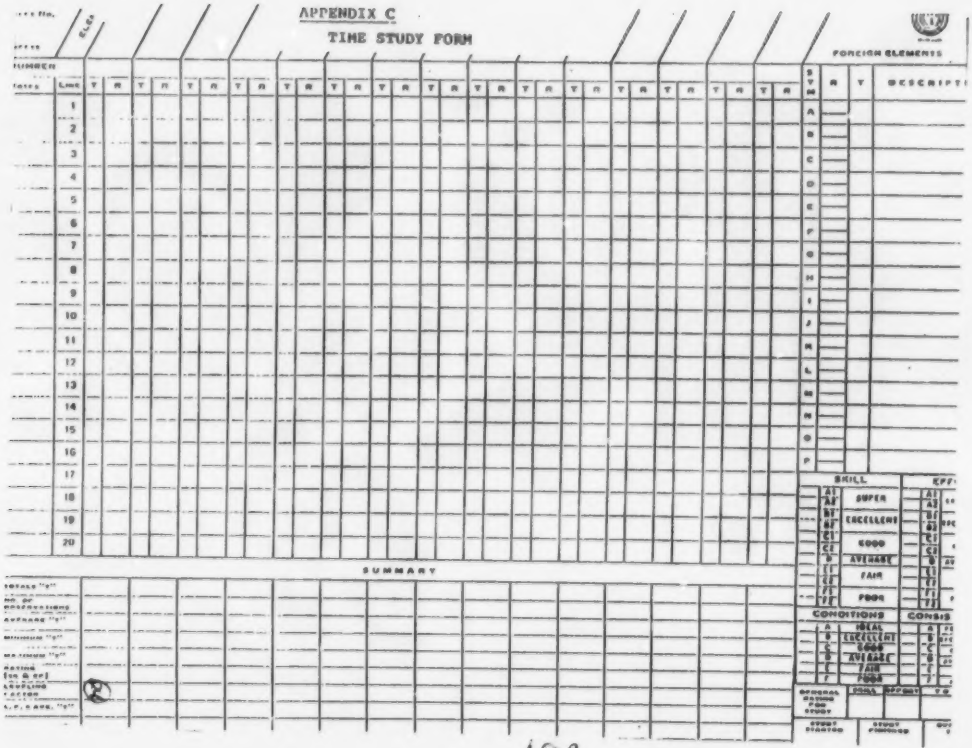
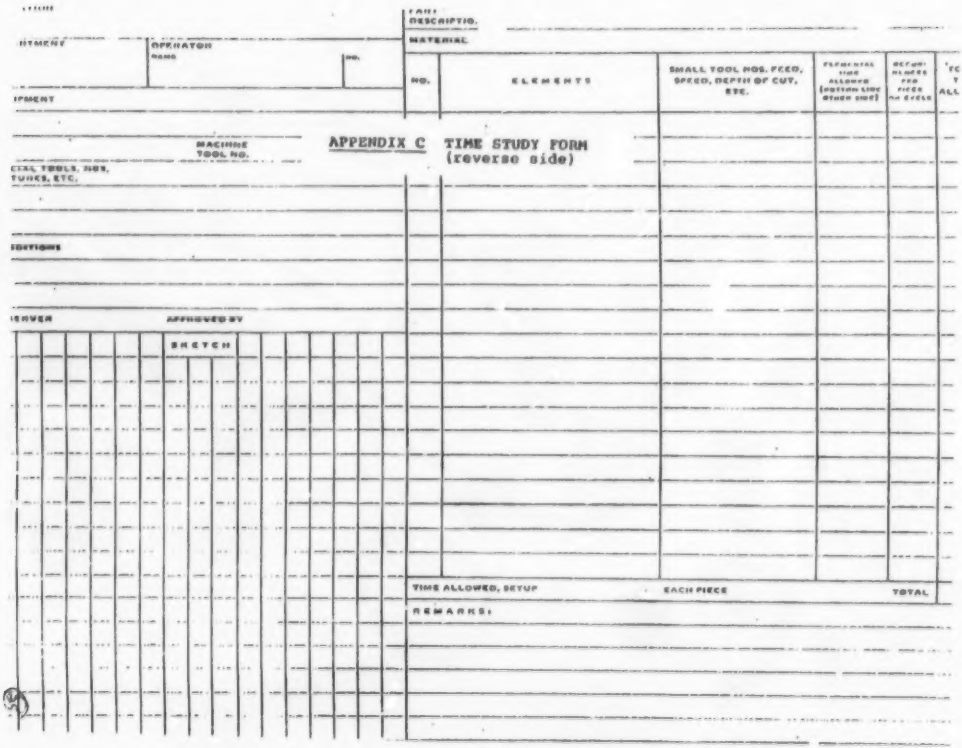
APPENDIX C

TIME STUDY FORM



102



APPENDIX C TIME STUDY FORM (reverse side)

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OPERATION _____

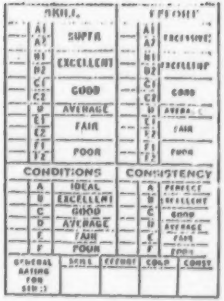
_____

OPERATOR _____

OBSERVERS (2) _____

_____

DATE _____



NOTES _____

_____

_____

Skill			Effort		
+0.15	A1	Superskill	+0.13	A1	Excessive
+0.13	A2		+0.12	A2	
+0.11	B1	Excellent	+0.10	B1	Excellent
+0.08	B2		+0.08	B2	
+0.06	C1	Good	+0.05	C1	Good
+0.03	C2		+0.02	C2	
0.00	D	Average	0.00	D	Average
−0.05	E1	Fair	−0.04	E1	Fair
−0.10	E2		−0.08	E2	
−0.16	F1	Poor	−0.12	F1	Poor
−0.22	F2		−0.17	F2	
Conditions			Consistency		
+0.06	A	Ideal	+0.04	A	Perfect
+0.04	B	Excellent	+0.03	B	Excellent
+0.02	C	Good	+0.01	C	Good
0.00	D	Average	0.00	D	Average

DEFINITIONS

Average Level: A level of performance established by definition.

Conditions: Those conditions which affect the operator only, and not those which affect the operation.

Consistency: Degree of variation of minimum and maximum elapsed times from average judged in relation to the nature of the operations and the skill and effort of the operator.

Effort: Will to work, controllable by the operator within the limits imposed by skill.

Method: Nature and number of motions employed to perform a specific task in a prescribed manner.

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Poor Effort

1. Obviously kills time.
2. Lacks interest in work.
3. Resents suggestions.
4. Works slowly and appears lazy.
5. Attempts to extend time through improper methods by:
   a. Making unnecessary trips for tools and supplies.
   b. Making two motions where one would do.
   c. Having poor setup or workplace layout.
   d. Doing work more accurately than necessary.
   e. Purposely using wrong or poor tool.

Fair Effort

1. Shows general tendencies but of lessened intensity.
2. Accepts suggestions grudgingly.
3. Attention appears to wander from work.
4. Possibly affected by late hours, dissipation, or mental worries.
5. Puts some energy into work.
6. Methods used improper as follows:
   a. Fairly systematic, but does not always follow same sequence.
   b. Still somewhat too accurate.
   c. Makes job unduly hard.
   d. Does not use best tools.
   e. Seems purposely somewhat ignorant of the work at hand.

Average Effort

1. Better than fair; poorer than good.
2. Works steadily.
3. May somewhat doubt fairness of time study man or manage ment.
4. Accepts suggestions, but makes none.
5. Seems to hold back his best effort.
6. With respect to method:
   a. Has good setup.
   b. Plans ahead.
   c. Works with good system.
   d. Reduces lost motions.

Good Effort

1. Little or no lost time.
2. Takes an interest in the work.
3. Takes no notice of the time study man
1. Works fast.
2. Uses hand as well as hands.
3. Takes keen interest in work.
4. Receives and makes many suggestions.
5. Has utmost faith in time study man.
6. Cannot keep up effort more than a few days.
7. Endeavors to show superiority.
8. Uses best equipment and methods available, and
   a. Reduces false motions to a minimum.
   b. Works systematically to best of his ability.

Excessive Effort

1. Extends himself to pace impossible to maintain steadily.
2. Best effort from every standpoint but that of health.

SKILL

Poor Skill

1. New man or misfit.
2. Unfamiliar with the work.
3. Uncertain of proper sequence of operations.
4. Hesitates between operations.
5. Makes many errors.
6. Movements clumsy and awkward.
7. Does not coordinate mind and hands.
8. Lacks self-confidence.
9. Cannot read drawings well.
10. Unable to think for himself.

Fair Skill

1. Misfit on job for a long time.
2. Comparatively new man.
3. Follows proper sequence of operations without much hesitatin

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ily familiar with equipment and surroundings.
6. Looks ahead to some extent.
7. Lacks full self-confidence.
8. Loses time due to own blunders.
9. Can read drawings fairly well.
10. Gets same output with less effort than poor man.

Average Skill:

1. Works with reasonable accuracy.
2. Has self-confidence.
3. Is proficient at the work.
4. Follows a set procedure without appreciable hesitation.
5. Understands his tools and equipment.
6. Plans ahead.
7. Coordinates hands and mind.
8. Reads drawings well.
9. Appears a little slow in motions.
10. Turns out satisfactory work.

Good Skill:

1. Noticeably better than ordinary run of men.
2. Markedly intelligent.
3. Possesses good reasoning ability.
4. Hesitation entirely eliminated.
5. Needs little supervision.
6. Works at steady pace.
7. Fairly quick in motions.
8. Works correctly to specifications.
9. Can instruct others less skilled.
10. Motions well coordinated.

Excellent Skill:

1. Precision of action
2. Shows speed and smoothness in performance.
3. Thoroughly familiar with work.
4. Makes no mistakes.
5. Works accurately with little measuring or checking.
6. Operates his machine or tools to best advantage.
7. Works rhythmically and with coordination.
8. Makes speed without sacrificing quality.
9. Has full self-confidence.

Super:

1. ...ne operator of excellent skill perfected.
2. Has been at the work for years.
3. Naturally suited to the work.
4. Works like a machine.
5. Motions so quick and smooth that they are hard to follow.
6. Does not seem to have to think about what he is doing.
7. Elements of operation blend into one another so that division points are difficult to recognize.
8. Conspicuously the best worker of all.

CONDITIONS

Conditions are those conditions which affect the operator and not those which affect the method. A clogged water line on a tool grinder which makes it necessary for a lathe operator to walk 200 feet to secure a pail of water before he can grind his tool is undoubtedly a poor condition in one sense of the word, but a large portion of the method followed in the operation of "Grind tool" is changed. No leveling factor can be devised which will cover conditions of this kind. The conditions which the time study man thinks of when he uses the word are those conditions which affect the skill or the effort of the operator when he is following the correct method. On a Monday morning in winter, for example, the shop may be unusually cold. The operator's hands will be still, and he will be retarded in his work to some extent. His proficiency will be reduced, but it is better clearly to attribute this to poor

CONSISTENCY

Consistency is rated after the elemental elapsed times have been determined by subtraction and is judged by the extent of the difference between the maximum and minimum values recorded for each element. A study which shows perfect consistency is seldom if ever obtained. Even when a mechanically controlled operation which is of the same length during each cycle is timed, errors in observing and the fact that the watch is read to only the nearest .0001 hour will cause inconsistencies. In most actual cases, a consistency rating of .00 is used. Better consistencies do not occur in the majority of cases, and if observed readings are exceptionally inconsistent, it is usually a sign that something is wrong with the observer, the operator, or the operation. This should be investigated instead of attempting to correct the data by

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ALLOWANCE DERIVATION SHEET

(USE INCONJUNCTION WITH DoD 5010.15)

ANALYZED BY _____ DATE _____

OPERATION _____

OPERATOR _____

TOTAL P, F & D ALLOWANCE:

ADD I, II & III BELOW = _____

ALLOWANCE FACTOR = $\frac{100\%}{100\% - (\text{TOTAL P, F, \& D ALLOWANCE} = ____)}$ = _____

CIRCLE APPROPRIATE ALLOWANCE IN EACH CATEGORY AND EXTEND

CATEGORY	DESCRIPTION				% ALLOWED
I. PERSONAL (pg A-II-3)					
1. BASIC:	(2) 10 min. breaks per 480 mins.			4.2	_____
2. CONDITIONS	Normal Office	0	Slightly disagreeable	3.0 to	
	Normal Shop	1.0	Extremely disagreeable (dust, heat, fumes, etc.)	6.0	_____
3. PREPARATION & CLEANUP	5 mins.	1.0	20 mins.	4.2	
	10 mins.	2.1	Super Clean	4.0	
	15 mins.	3.1			_____
TOTAL PERSONAL ALLOWANCE					_____
II. DELAY (pg A-II-8)					
1. TYPE OF JOB:	Isolated Job	1	Coordinated Job	2	_____
2. BALANCING DELAY:	Move once every:				
	5 mins.	5	60 mins.	2	
	30 mins.	3	2 hours	0	_____
3. SPECIAL DELAYS: (pg A-II-9)	Describe: _____				
	(consult, wait, breakdown, interference, rework, extra work rest, excess scrap, clean, maintenance, etc.)				_____
	Allow allowance of 0.2 for every min. of delay				_____
TOTAL DELAY ALLOWANCE					_____

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FATIGUE (pg A-II-5)

1. WEIGHT ALLOWANCES: Select % of time under load category then determine weight allowance by reading from the appropriate number of pounds handled. When rolling or sliding load, multiply weight of load by coefficients of friction on page A II 6 of handout.

Effective Net Weight Handled	Percent Of Time Under Load				
	1 - 12	13 - 25	26 - 50	51 - 75	76 - 100
1 - 10	0	1	2	3	4
11 - 20	1	3	5	7	10
21 - 30	2	4	9	13	17
31 - 40	3	6	13	19	25
41 - 50	5	9	17	25	34
51 - 60	6	11	22	x	x
61 - 70	7	14	28	x	x
71 - 80	8	17	34	x	x

Basic Weight Allowance _____
When picking up load from floor, multiply basic allowance by 1.10
When placing load above chest height, multiply basic allowance by 1.20
When getting load from above chest height, multiply basic allowance by 0.50

Weight Allowance _____

2. POSITION:	Can Sit or Stand	0	Climbing or Descending	4	
	Sitting	1	Cramped	7	_____
	Walking	1			
	Standing	2			
3. MENTAL:	Habit	0	Concentrated Attention	4	
	Full Attention		Deep Concentration	8	_____
4. LIGHTING:	Continual Glare or Insufficient Lighting			2	_____
5. NOISE FACTOR:	Constant Loudness	1	Intermittent Loudness	2	_____
6. MONTONY (Cycle Time)	0.00 - 0.0 mins.	4	0.81 - 2.5 mins.	1	
	0.21 - 0.4 mins.	3	Over 2.5 mins.	0	_____
	0.41 - 0.8 mins.	2			
7. RESTRICTIVE SAFETY EQUIPMENT	Face Shield	2	Tight, Heavy, clothing	4	
	Rubber Boots	2	Filter Mask	5	
	Goggles or Welding Mask	3	Safety Glasses	0	_____

TOTAL FATIGUE ALLOWANCE _____

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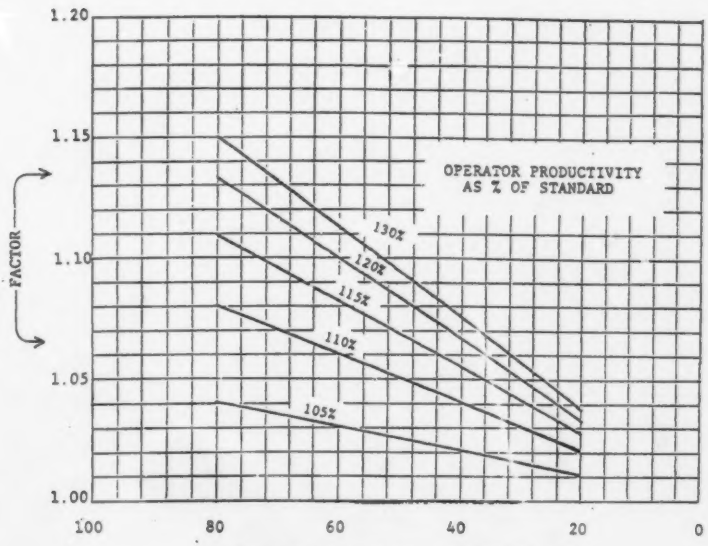

Pay Productivity (to compute earnings) = Factor X Actual Productivity (complete operation)

Example:
- 40% of total operation time is machine time
- operator is 110% productive during manual portion
- actual productivity for entire operation is 106%
- factor = 1.04
- productivity (to compute earnings) equals 1.04 X 106% = 110%

Notes:

1. This chart only applies to operations where actual productivity is greater than 100%.
2. Operations where machine time is more than 80%, or less than 20%, of total operation time are not addressed in this chart. Operations of this type should be considered on an individual basis.

This is an example of one specific way of computing operator's pay productivity in an operation with a significant amount of machine time. The actual method of adjustment and degree of adjustment will depend upon policy of the

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REGULAR WORKSHOP

FROM:

SUBJECT: WRITTEN NOTIFICATION OF THE SHELTERED WORKSHOP CERTIFICATE WAGE RATE APPLICABLE TO YOU

Under the provision of the subminimum wage certificate issued under Section 14(C) of the Fair Labor Standards Act, we are mandated to pay you a minimum guaranteed hourly rate of _____ for the period of _____ to _____. Your wages are based on commensurate wage rates--that is, a comparison of the amount and quality of your work produced with that of nonhandicapped workers in your area doing similar type work. For example, the commensurate wage of a handicapped worker who produces half as much as the nonhandicapped workers would be half of the wage paid to the nonhandicapped workers.

You are to be paid the minimum guaranteed hourly rate as indicated above which applies to you whether you work on hourly rate or piece rate. However, if you work on a job which is paid on piece rate and your piece rate earnings are more than the minimum guaranteed hourly rate mentioned above, you will be paid on the piece rate which is the higher of the two. If you have any questions, please contact _____.

Signed by: _____
(Shop Representative)

This memo has been read and explained to me, and I have been given a copy of this memo for my information and use.

Signed by: _____
(Worker)

Date: _____

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WORK ACTIVITIES CENTER

TO:

FROM:

SUBJECT: WRITTEN NOTIFICATION OF THE SHELTERED WORKSHOP CERTIFICATE WAGE RATE APPLICABLE TO YOU

Under the provision of the subminimum wage certificate issued under Section 14(C) of the Fair Labor Standards Act, we are required to pay you commensurate wage rates as you are working in a Work Activities Center. This means that no minimum guaranteed hourly wage rate applies to you. However, your wages are based on commensurate wage rates--that is, a comparison of the amount and quality of your work produced with that of nonhandicapped workers in your area doing similar type work. For example, the commensurate wage of a handicapped worker who produces half as much as the nonhandicapped workers would be half of the wage paid to the nonhandicapped workers. For the period of _____ to _____, you are to be paid your full piece rate earning or if you have been assigned a guaranteed hourly rate based on your average productivity, you will need to be paid that guaranteed hourly rate for each hour you work. If you have any questions, please contact _____.

Signed by: _____
(Shop Representative)

The above memo has been read and explained to me, and I have been given a copy of this memo for my information and use.

Signed by: _____
(Worker)

Date: _____

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APPEI

WEEKLY PE. . MANCE SUMMARY
(VARIANCE ANALYSIS)

DEPARTMENT: Textile

SUPERVISOR: John Doe

WEEK ENDING: 2/25/83

	ACTUAL HOURS WORKED						EARNED HOURS						PERFORMANCE (% EFFICIENCY)	COMMENTS
	MONDAY	TUESDAY	WEDNES.	THURS.	FRIDAY	TOTAL	MONDAY	TUESDAY	WEDNES.	THURS.	FRIDAY	TOTAL		
Carter	7	6	-	7	7	27	5	4	-	5	5	19	70%	
Smith	7	7	7	7	4	32	6	5	6	6	3	26	81%	
Brown	7	-	-	6	-	13	5	-	-	5	-	10	77%	
Gray	7	7	7	7	7	35	7	7	7	6	7	34	97%	
Jones	7	7	7	7	-	28	7	6	6	8	-	27	96%	
TOTAL FOR DEPT.						135						116	86%	

EXPECTED EFFICIENCY: 80% ACTUAL EFFICIENCY: 86% VARIANCE: + 6%

REASONS FOR VARIANCE:

PREPARED BY: John Doe DATE: 2/28/83

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Attachment B

CLIENT PROFILE - OPPORTUNITIES UNLIMITED

NAME	MEASURED INTELLIGENCE	ADAPTIVE BEHAVIOR	VISUAL ACUITY/CORRECTED LEFT EYE	VISUAL ACUITY/CORRECTED RIGHT EYE	HANDICAPPING CONDITIONS IN ADDITION TO BLINDNESS
A	profound	severe	LP	LP	hypertension, hyperactive, deaf
B	mild	severe	HM	HM	epilepsy
C	profound	profound	NLP	NLP	hearing impairment
D	profound	profound	NLP	NLP	hearing impairment
E	severe	severe	LP	LP	cerebral palsy
F	mild	mild	20/400	20/400	cerebral palsy
G	moderate	moderate	NLP	NLP	
H	moderate	severe	CF	CF	
I	normal	moderate	NLP	NLP	deaf
J	profound	profound	LP	LP	deaf
K	severe	severe	CF	CF	epilepsy, cerebral palsy
L	profound	profound	20/200	20/200	deaf, amyotonia, congenital cerebral palsy
M	severe	severe	NLP	NLP	
N	mild	mild	20/300	20/400	deaf
O	profound	profound	NLP	NLP	
P	mild	mild	NLP	LP	
Q	moderate	profound	20/400	20/40[illegible]	deaf
R	profound	profound	20/200	LP	deaf
S	profound	moderate	LP	LP	deaf, diabetic, epilepsy
T	moderate	moderate	20/800	20/800	chronic schizophrenic, epilepsy
U	moderate	moderate	CF	CF	
V	profound	profound	NLP	LP	deaf, epilepsy
W	average	moderate	NLP	NLP	deaf
X	severe	profound	20/200	20/400	
Y	moderate	mild	NLP	CF	
Z	profound	profound	NLP	NLP	deaf
AA	profound	profound	NLP	NLP	
BB	severe	moderate	20/200	20/200	
CC	profound	profound	CF	CF	deaf
DD	moderate	moderate	NLP	NLP	
EE	profound	profound	NLP	NLP	deaf, webbed fingers

KEY

HM-hand movements only
LP-light perception only
NLP-no light perception
CF-counts fingers

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national easter seal society
OVER 60 YEARS OF SERVICE TO INDIVIDUALS WITH DISABILITIES

Office of Governmental Affairs

October 17, 1985

The Honorable Austin J. Murphy
Chairman
Subcommittee on Labor Standards
Committee on Education & Labor
Room B-346A Rayburn
House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing on behalf of the National Easter Seal Society to inform the Subcommittee of our strong support for the amendments to the Fair Labor Standards Act (FLSA) proposed by H.R. 2676. We believe that the changes proposed by H.R. 2676 are timely and necessary. Section 14 (c) of the FLSA authorizes the employment of persons with disabilities under special minimum wage provisions intended to promote employment opportunities for these individuals. However, due to changes in the population served in sheltered settings, these provisions have, in many ways, become an obstacle to such employment. The National Society appreciates the opportunity to present our views on H.R. 2676 and encourages Congressional enactment of this legislation.

The National Society provides an extensive range of comprehensive rehabilitation and related services. Last year, Easter Seal Societies nationwide served over one million individuals. Many of these persons received vocational services, including evaluation, work adjustment, work activity services, extended employment, on-the-job training and competitive placement. At least 42 Easter Seal work programs provide services to people with disabilities under FLSA guidelines.

As you know, since 1938, FLSA has authorized the employment of people with disabilities at special minimum wages. These provisions support employment opportunities for individuals who, because of the severity of their disabilities, would not be able to obtain work and earn regular wages in competitive settings. Section 14 (c) of the Act authorizes the payment of wages that are below the current $3.35 hourly minimum to persons with disabilities, taking into account individual productivity and the prevailing wages paid to non-disabled workers performing the same jobs. The regulations make a distinction between less severely disabled sheltered workshop workers and persons with very severe or multiple disabilities

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employed in "work activities centers" where the work is primarily for therapeutic reasons. Under section 14 (c), work activities center employees must be physically separated from other work center workers. Major revisions to this section of the Act were last made in 1966.

The National Society believes that significant changes in the type of persons served in work centers during the last two decades require the examination and revision of section 14 (c). The proportion of individuals with severe disabilities participating in work center programs has increased dramatically. In part, this trend is the result of greater success in placing persons with disabilities in competitive employment. To a larger degree, however, this increase is attributed to efforts by states to deinstitutionalize persons with severe disabilities. Many individuals with severe mental and physical disabilities have returned to their communities and are now participating in work activity programs.

In the late 1960's, work activities programs accounted for slightly under a third of the total disabled worker population employed in sheltered settings. At present, these work activities centers account for almost 80 percent of all sheltered employment. In addition, the federal government has placed greater emphasis on the need to serve individuals with severe disabilities. Facilities which were previously viewed as agencies of transition, with respect to employment, have, in some cases, become long-term service providers for individuals whose impairments make their placement in competitive employment unlikely.

These factors have contributed to a substantially different mix of individuals served in work centers today than that which existed when the present certificate system under section 14 (c) was established. There are currently over 4,800 work centers holding more than 8,200 program certificates. Seventy-five percent of the certificates are for exceptions to the 50-percent minimum wage floor. Employment program administrators and Department of Labor staff are buried under a mountain of certificate-related paperwork.

Department of Labor regulations require work centers to obtain as many as five different certificates in order to train, evaluate, and employ people with disabilities and varied levels of productivity. These multiple certificates require excessive amounts of record-keeping, staff time and related resources. The National Society questions the value of the multiple certificates and believes that the current system detracts from our overall employment goals. H.R. 2676 would streamline the certificate system under the FLSA by allowing one certificate to cover all levels of workers with disabilities served in a given work center.

More importantly, H.R. 2676 would eliminate the requirement that clients of work activities centers be segregated from other workers with disabilities. The National Society strongly endorses this revision. Easter Seal work center administrators seek the least restrictive regulatory environment in which to move clients from sheltered to competitive employment. Work center employees in Easter Seal programs are treated as individuals and as adults. The imposition of artificial barriers between disab-

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led workers and more severely disabled work activities program participants undermines the positive normal work environment sought in our programs.

The National Society promotes the concept of mainstreaming within the work center environment. We know that severely disabled individuals benefit from exposure to more skilled workers. Highly productive employees serve as role models for more severely disabled persons, such as work activities center workers. In our experience, the integration of work center employees has generally led to improved productivity on the part of less skilled workers and has not caused a decline in productivity for higher function individuals.

From a financial perspective, work centers are currently required to bear substantial and unnecessary costs in order to maintain separate facilities or floor space, separate supervisory personnel and separate records. We believe that the elimination of the non-integration policy under section 14 (c) will permit more effective use of work center resources.

The National Society does not believe that the revisions to the FLSA proposed by H.R. 2676 jeopardize the treatment or payment of people with disabilities employed in work centers. Historically, the field has relied on productivity analysis to ensure that work center workers are fairly paid for their efforts. In our experience, this process often provides work center employees with wages that are higher than those guaranteed by government minimum wage requirements. Furthermore, the FLSA provides for comprehensive and ongoing monitoring of sheltered employment programs to insure compliance with Federal wage guidelines.

In summary, the National Society strongly supports the enactment of H.R. 2676. The elimination of the multiple certificate system and worker segregation under the FLSA will greatly enhance the ability of work centers to provide a full range of vocational services and employment that are tailored to the unique needs of individual workers. We believe that Congressman Petri's proposal is an effective means of bringing about needed change and will contribute to improved employment opportunities for individuals with disabilities.

On behalf of the National Easter Seal Society, thank you for this opportunity to present our views and support for H.R. 2676.

Sincerely,

Joseph D. Romer
Director of Governmental Affairs

JDR:cg

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RFW rehabilitation facilities of wisconsin

6000 gisholt drive, suite 106 • madison, wisconsin 53713
phone (308) 221-1169

OCT 3 1985

September 30, 1985

Austin J. Murphy, Chairman
Committee on Education and Labor
Subcommittee on Labor Standards
U.S. House of Representatives
B-346A Rayburn House Office Building
Washington, DC 20515

Dear Representative Murphy:

RE: HR 2676

Thank you for the invitation to testify before your subcommittee. Unfortunately, the date conflicts with our annual conference, one time when I cannot excuse myself from attendance.

I hope the accompanying material will help you in your delibertations on HR 2676. As you might gather, we are very supportive of the changes afforded by this bill.

Sincerely,

Robert L. Lewein

Robert L. Lewein,
Executive Director

RLL:emb

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6000 gisholt drive, suite 106 - madison, wisconsin 53713
phone (608) 221-1169

TESTIMONY
Proposed Modification to Section 14(c) of the
Fair Labor Standards Act
Hearing scheduled October 3, 1985

Background

Rehabilitation Facilities of Wisconsin is a state Association of sheltered workshops consisting of 57 facilities located throughout the state. I am Robert Lewein, Executive Director of the Association for the past four years. I appreciate the opportunity to present material to you which reflects our experiences here in Wisconsin. As you might suspect, I do visit the facilities here in Wisconsin quite frequently and see first hand the problems caused by the 1966 FLSA amendments.

What was good at the time of passage was the special attention paid to physically and mentally handicapped and their ability to receive special minimum wages based on their individual productivity. These provisions continue to allow many handicapped persons to compete at a salary level equal to those of non-handicapped persons.

Today

But the world is changing and has changed out there. More severely handicapped individuals are entering the community workforce. Here in Wisconsin, the Community Integration Program (CIP) is allowing more severely handicapped persons to live and work outside the institutional setting. The focus on mixing and working in more "normalized" settings. Without the changes in this bill,

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HR 3676, artificial separational boundaries remain. In shops that I visit, this separation requirement creates a non-mixing environment which is quite ludicrous when we look at what is trying to be accomplished. In actuality the WAC group is on one side of the room while sheltered workers are on the other side. Certainly mingling both categories of workers would be beneficial to all concerned.

Most directors will never cease to point out the ridiculous need for separate certificates. Again, I strongly urge the elimination of the 50 percent guarantee. So few person fall in that category in most of our facilities. All of my members support the change here, that is a handicapped worker should be paid on the basis of their individual productivity. Thus a lot of paperwork and compliance issues would be reduced. The focus could then change to technical assistance and substansive compliance reviews versus the rather complex regulations now in place.

Recommendations

As a member of the National Association of Rehabilitation Facilities (NARF), I know you are receiving a complete and thorough discussion of this subject and would ask that you review it once again. RFW has been fully aware of the changes offered in Representative Petri's bill HR 2676. We fully endorse the recommended changes. Reiterating that those changes in 14(c) would eliminate the separate certificate programs and require that each handicapped worker be paid according to their individual productivity. These very basic changes would help every facility more easily serve the significantly handicapped person entering its programs these days.

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